

HOUSE JOURNAL

SEVENTY-FOURTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-FOURTH DAY — SUNDAY, MAY 28, 1995

The house met at 1:00 p.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 582).

Present — Mr. Speaker; Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Absent, Excused — Moffat.

The invocation was offered by Jim Morris, Senate Doorkeeper, as follows:

Our Lord and our maker, we assemble this afternoon with a prayer of gratitude for these women and men who are making a difference in the quality of life in Texas. By their action and determination, government is now open to the disadvantaged and more supportive of the governed. Because of their concern, education is recharted so that children will know more about their world. They have focused on making Texas prosper, and for all of these and other initiatives, resources are now in place. Our prayer then today is one of appreciation and recognition to the leadership and to all who have made a contribution to the success of this, the 74th Session of the Texas Legislature. Now bless the work of the Texas house today. In your name, amen.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today because of important business:

Moffat on motion of Uher.

SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolutions:

SB 42, SB 44, SB 48, SB 74, SB 80, SB 111, SB 369, SB 390, SB 449, SB 452, SB 480, SB 496, SB 553, SB 595, SB 607, SB 640, SB 726, SB 783, SB 870, SB 886, SB 896, SB 1058, SB 1135, SB 1439, SB 1685, SJR 46, SCR 5, SCR 15, SCR 17, SCR 18, SCR 89, SCR 101, SCR 115, SCR 136, SCR 153, SCR 156, SCR 162

**PROCLAMATION BY THE GOVERNOR
OF THE STATE OF TEXAS**

The speaker laid before the house and had read the following proclamation by the governor:

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article 4, Section 14 of the Texas Constitution, I, George W. Bush, Governor of Texas, do hereby disapprove and veto **HB 2732** because of the following objections:

HB 2732 represents excessive government intervention in private industry.

This bill, which includes the "Liquor Industry Fair Dealing Act," imposes upon liquor suppliers a binding statutory relationship with a single liquor wholesaler for the exclusive regional distribution of the supplier's liquor brands in Texas. By its own provision, the bill would apply retroactively to May 1, 1995, compelling a liquor supplier to use the wholesaler with whom the supplier then had a contractual relationship. The bill further provides that a liquor supplier may only change wholesalers upon application to, and approval of, the Texas Alcoholic Beverage Commission (TABC).

The process for application review in **HB 2732** is overly restrictive and ambiguous on its face. Additionally, this bill unreasonably impairs the ability of suppliers and wholesalers to freely contract with each other by limiting with whom the suppliers may contract and their ability to change wholesalers. While suppliers and wholesalers voluntarily may choose to use exclusive territorial arrangements, this bill mandates their use. Without compelling evidence that the current distribution system is harmful to Texas consumers, government intervention of this magnitude is unjustified and represents bad public policy.

HB 2732 also contains two provisions that appear to be unconstitutional. First, the proposed legislation affords a liquor wholesaler the right to appeal an adverse decision by the TABC on a supplier's application to change wholesalers, but fails to grant suppliers a similar remedy. The proposed bill also retroactively limits a supplier's vested rights in an existing contract by requiring the supplier to use the wholesaler who was under contract as of May 1, 1995. Thus, the retroactive imposition of previously existing contractual relationships may have the practical effect of granting the affected wholesalers a virtually perpetual franchise, dissolvable only upon the occurrence of an extraordinary circumstance.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 27th day of May, 1995.

George W. Bush
Governor of Texas

(SEAL)

Antonio O. Garza, Jr.
Secretary of State

SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolution:

HB 43, HB 46, HB 120, HB 127, HB 170, HB 330, HB 334, HB 341, HB 387, HB 690, HB 770, HB 835, HB 871, HB 885, HB 994, HB 1030, HB 1089, HB 1259, HB 1274, HB 1275, HB 1361, HB 1362, HB 1407, HB 1765, HB 1794, HB 1922, HB 1933, HB 1966, HB 1976, HB 1987, HB 1988, HB 2031, HB 2065, HB 2098, HB 2129, HB 2177, HB 2197, HB 2198, HB 2267, HB 2296, HB 2330, HB 2331, HB 2345, HB 2358, HB 2370, HB 2382, HB 2402, HB 2405, HB 2449, HB 2501, HB 2516, HB 2522, HB 2525, HB 2527, HB 2745, HB 2803, HB 2805, HB 2873, HB 2944, HB 2949, HB 2980, HB 3199, HB 3207, HB 3208, HB 3222, HCR 234

RESOLUTIONS REFERRED TO COMMITTEE

The following resolutions were laid before the house and referred to committee:

By Kubiak,
HR 1214, Congratulating Amanda Green.
To Committee on Rules and Resolutions.

By Conley,
HR 1215, Congratulating St. Philip's Episcopal Church on the occasion of its 100th anniversary.
To Committee on Rules and Resolutions.

By Kubiak,
HR 1216, Congratulating Justin Jones.
To Committee on Rules and Resolutions.

By Kubiak,
HR 1217, Honoring Deena Darst for her UIL state championship.
To Committee on Rules and Resolutions.

HB 369 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Averitt submitted the following conference committee report on **HB 369**:

Austin, Texas, May 25, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 369** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Patterson

Averitt

Shapiro

Brady

Rosson

G. Lewis

Cain

Siebert

Ellis

Smithee

On the part of the Senate

On the part of the House

HB 369, A bill to be entitled An Act relating to the operation and funding of small employer health benefit plans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 26.02, Insurance Code, is amended by amending Subdivisions (8), (12), and (23) and by adding Subdivision (25) to read as follows:

(8) "Eligible employee" means an employee who works on a full-time basis and who usually works at least 30 hours a week. The term includes a sole proprietor, a partner, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include:

(A) an employee who works on a part-time, temporary, seasonal, or substitute basis; or

(B) an employee who is covered under:

(i) another health benefit plan; ~~or~~

(ii) a self-funded or self-insured ~~an~~ employee welfare benefit plan that provides health benefits and that is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(iii) the Medicaid program if the employee elects not to be covered;

(iv) another federal program, including the CHAMPUS program or Medicare program, if the employee elects not to be covered; or

(v) a benefit plan established in another country if the employee elects not to be covered.

(12) "Late enrollee" means an eligible employee or dependent who requests enrollment in a small employer's health benefit plan after the expiration of the initial enrollment period established under the terms of the first plan for which that employee or dependent was eligible through the small employer or

after the expiration of an open enrollment period under Article 26.21(e) of this code. An eligible employee or dependent is not a late enrollee if:

(A) the individual:

(i) was covered under another employer health benefit plan at the time the individual was eligible to enroll;

(ii) declines in writing, at the time of the initial eligibility, stating that coverage under another employer health benefit plan was the reason for declining enrollment;

(iii) has lost coverage under another employer health benefit plan as a result of the termination of employment, the termination of the other plan's coverage, the death of a spouse, or divorce; and

(iv) requests enrollment not later than the 31st day after the date on which coverage under another employer health benefit plan terminates;

(B) the individual is employed by an employer who offers multiple health benefit plans and the individual elects a different health benefit plan during an open enrollment period; or

(C) a court has ordered coverage to be provided for a spouse or minor child under a covered employee's plan and request for enrollment is made not later than the 31st day after issuance of the date on which the court order is issued.

(23) "Small employer health benefit plan" means a plan developed by the commissioner under [the preventive and primary care benefit plan, the in-hospital benefit plan, or the standard health benefit plan described by] Subchapter E of this chapter or any other health benefit plan offered to a small employer in accordance with Article 26.42(c) or 26.48 ~~[(†)]~~ of this code.

(25) "Point-of-service contract" means a benefit plan offered through a health maintenance organization that:

(A) includes corresponding indemnity benefits in addition to benefits relating to out-of-area or emergency services provided through insurers or group hospital service corporations; and

(B) permits the insured to obtain coverage under either the health maintenance organization conventional plan or the indemnity plan as determined in accordance with the terms of the contract.

SECTION 2. Articles 26.06(a) and (b), Insurance Code, are amended to read as follows:

(a) An individual or group health benefit plan is subject to this chapter if it provides health care benefits covering three or more eligible employees of a small employer and if it meets any one of the following conditions:

(1) a portion of the premium or benefits is paid by ~~[or on behalf of]~~ a small employer; or

(2) ~~[a covered individual is reimbursed, whether through wage adjustments or otherwise, by or on behalf of a small employer for a portion of the premium; or~~

~~[(3)]~~ the health benefit plan is treated by the employer or by a covered individual as part of a plan or program for the purposes of Section 106 or 162, Internal Revenue Code of 1986 (26 U.S.C. Section 106 or 162).

(b) Except as provided by Subsection (a) of this article, this chapter does not apply to an individual health insurance policy that is subject to individual

underwriting, even if the premium is remitted through a payroll deduction method ~~[underwritten individually]~~.

SECTION 3. Article 26.14, Insurance Code, is amended to read as follows:

Art. 26.14. PRIVATE PURCHASING COOPERATIVE. (a) Two or more small employers may form a cooperative for the purchase of small employer health benefit plans. A cooperative must be organized as a nonprofit corporation and has the rights and duties provided by the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(b) On receipt of a certificate of incorporation or certificate of authority from the secretary of state, the cooperative shall file written notification of the receipt of the certificate and a copy of the cooperative's organizational documents with the commissioner.

(c) The board of directors shall file annually with the commissioner a statement of all amounts collected and expenses incurred for each of the preceding three years.

(d) A purchasing cooperative or a member of the board of directors, the executive director, or an employee or agent of a purchasing cooperative is not liable for:

(1) an act performed in good faith in the execution of duties in connection with the purchasing cooperative; or

(2) an independent action of a small employer insurance carrier or a person who provides health care services under a health benefit plan.

SECTION 4. Article 26.21, Insurance Code, is amended to read as follows:

Art. 26.21. SMALL EMPLOYER HEALTH BENEFIT PLANS; EMPLOYER ELECTION. (a) Each small employer carrier shall provide the small employer health benefit plans without regard to claim experience, health status, or medical history. Each small employer carrier shall issue the plan chosen by the small employer to each small employer that elects to be covered under that plan~~[-, agrees to make the required premium payments,]~~ and agrees to satisfy the other requirements of the plan.

(b) This article does not impose a statutory mandate of an employer contribution to the premium paid to the small employer carrier. However, the small employer carrier may require an employer contribution in accordance with the carrier's usual and customary practices on all employer group health insurance plans in this state. The premium contribution level shall be applied uniformly to each small employer offered or issued coverage by the small employer carrier in this state. If two or more small employer carriers participate in a purchasing cooperative established under Article 26.14 of this code, the carrier may use the contribution requirement established by the purchasing cooperative for policies marketed by the cooperative. [Coverage under a small employer health benefit plan is not available to a small employer unless the small employer pays at least 75 percent of the insurance premium for its eligible employees who elect to be covered by at least one of the small employer health benefit plans selected by the small employer.] Coverage is available under a small employer health benefit plan if at least 75 [90] percent of a small employer's eligible employees elect to be covered.

(c) If a small employer offers multiple health benefit plans, the collective enrollment of all of those plans must be at least 75 percent of the small

employer's eligible employees or, if applicable, the lower participation level offered by the small employer carrier under Subsection (d) of this article. A small employer carrier may elect not to offer health benefit plans to a small employer who offers multiple health benefit plans if such plans are to be provided by more than one carrier and the small employer carrier would have less than 75 percent of the small employer's eligible employees enrolled in the small employer carrier's health benefit plan unless the coverage is provided through a purchasing cooperative. A small employer who elects to make contributions for payment of the premium is not required to pay any amount with respect to an employee who elects not to be covered. The small employer may elect to pay the premium cost for additional coverage. This chapter does not require a small employer to purchase health insurance coverage for the employer's employees.

(d) A small employer carrier may offer small employer health benefit plans to a small employer even if less than 75 percent of the eligible employees of that employer elect to be covered if the small employer carrier permits the same percentage of participation as a qualifying percentage for each small employer benefit plan offered by that carrier in this state. A small employer carrier may offer small employer health benefit plans to a small employer even if the employer's participation level is less than the small employer carrier's qualifying participation level established in accordance with this article if:

(1) the small employer obtains a written waiver for each eligible employee who declines coverage under a health plan offered to the small employer ensuring that the eligible employee was not induced or pressured into declining coverage because of the employee's risk characteristics; and

(2) the small employer carrier accepts or rejects the entire group of eligible employees that choose to participate and excludes only those employees that have declined coverage, provided that the carrier may underwrite the group of eligible employees that do not decline coverage [(c) An eligible employee may obtain coverage in addition to coverage purchased by the employer if at least 40 percent of the eligible employees elect to obtain the same additional coverage. Subject to insurability, any number of eligible employees may otherwise obtain coverage in addition to coverage purchased by the employer. The additional coverage may be paid for by the employer, the employee, or both].

(e) A small employer carrier may not provide coverage to a small employer or the employees of a small employer under Subsection (d)(2) of this article if the health carrier or an agent for the health carrier knows that the small employer has induced or pressured an eligible employee or the employee's dependents to decline coverage because of an individual's risk characteristics.

(f) A small employer carrier, an employer, or an agent may not use the provisions of Subsection (d)(2) of this article to circumvent the requirements of this chapter.

(g) Except as otherwise provided by this chapter, a small employer carrier may not establish a separate class or classes of business for small employers.

(h) [(d)] The initial enrollment period for the employees and their dependents must be at least 31 [30] days, with a 31-day open enrollment period provided annually.

(i) ~~(e)~~ A small employer may establish a waiting period during which a new employee is not eligible for coverage. A waiting period established as provided by this subsection may not exceed 90 days from the first day of employment.

(j) ~~(f)~~ A new employee of a covered small employer and the dependents of that employee may not be denied coverage if the application for coverage is received by the small employer carrier not later than the 31st day after the date on which the employment begins or on completion of a waiting period established by the employer under Subsection (i) of this article.

(k) ~~(g)~~ A late enrollee may be excluded from coverage until the next annual open enrollment period and ~~[for 18 months from the date of application or]~~ may be subject to a 12-month preexisting condition provision as described by Article [Articles] 26.49[(b), (c), (d), and (e)] of this code. ~~[If both a period of exclusion from coverage and a preexisting condition provision are applicable to a late enrollee, the combined period of exclusion may not exceed 18 months from the date of the late application.]~~

(l) ~~(h)~~ A small employer carrier may not exclude any eligible employee or dependent, including a late enrollee, who would otherwise be covered under a small employer group.

(m) ~~(i)~~ A small employer health benefit plan issued by a small employer carrier may not limit or exclude, by use of a rider or amendment applicable to a specific individual, coverage by type of illness, treatment, medical condition, or accident, except for preexisting conditions or diseases as permitted under Article 26.49 of this code.

(n) ~~(j)~~ A small employer health benefit plan may not limit or exclude initial coverage of a newborn child of a covered employee. Any coverage of a newborn child of an employee under this subsection terminates on the 32nd ~~[31st]~~ day after the date of the birth of the child unless:

(1) dependent children are eligible for coverage; and

(2) notification of the birth and any required additional premium are received by the small employer carrier not later than the 31st ~~[30th]~~ day after the date of birth.

(o) ~~(k)~~ If the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272, 100 Stat. 222) does not require continuation or conversion coverage for dependents of an employee, a dependent who has been covered by that small employer for at least one year or is under one year of age may elect to continue coverage under a small employer health benefit plan, if the dependent loses eligibility for coverage because of the death, divorce, or retirement of the employee, as required by Section 3B, Article 3.51-6, of this code.

SECTION 5. Article 26.31, Insurance Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) A small employer carrier may not establish a separate class of business based on participation requirements.

(f) A small employer carrier may not establish a separate class of business based on whether the coverage provided to a small employer group is provided on a guaranteed issue basis or is subject to underwriting or proof of insurability.

SECTION 6. Article 26.38, Insurance Code, is amended to read as follows:

Art. 26.38. HEALTH MAINTENANCE ORGANIZATION; APPROVED HEALTH BENEFIT PLAN. (a) The premium rates for a state-approved health benefit plan offered by a health maintenance organization under Article 26.48 of this code must be established in accordance with formulas or schedules of charges filed with the department.

(b) A health maintenance organization that participates in a purchasing cooperative that provides employees of small employers a choice of benefit plans, that has established a separate class of business as provided by Article 26.31 of this code, and that has established a separate line of business as provided under Article 26.48(a) of this code and Title XIII, Public Health Service Act (42 U.S.C. Section 300e et seq.) may use rating methods in accordance with this subchapter that are used by other small employer carriers participating in the same cooperative, including rating by age and gender.

SECTION 7. Article 26.42, Insurance Code, is amended to read as follows:

Art. 26.42. SMALL EMPLOYER HEALTH BENEFIT PLANS. (a) A small employer carrier shall offer the following two [~~three~~] health benefit plans as adopted by the commissioner:

- (1) the catastrophic [~~preventive and primary~~] care benefit plan; and
- (2) the basic coverage [~~in-hospital~~] benefit plan[~~;~~and
- [(3) the standard health benefit plan].

(b) A small employer carrier may offer to a small employer additional benefit riders to either of the [~~standard health~~] benefit plans [~~plan~~].

(c) [~~A small employer carrier may not offer to a small employer benefit riders to:~~

[(1) the preventive and primary care benefit plan, except as provided by Article 26.45(d) of this code; or

[(2) the in-hospital benefit plan, except as provided by Article 26.46(e) of this code.

[(d)] Subject to the provisions of this chapter, a small employer carrier may also offer to small employers any other health benefit plan authorized under this code. Article 26.06(c) does not apply to a health benefit plan offered to a small employer under this subsection.

SECTION 8. Article 26.43(a), Insurance Code, is amended to read as follows:

(a) The commissioner shall promulgate the benefits section of the catastrophic care [~~preventive and primary~~] benefit plan and[~~;~~ the basic coverage [~~in-hospital~~] benefit plan[~~;~~and the standard health benefit plan] policy forms in accordance with Article 26.44A of this code and shall develop prototype policies for each of the benefit plans. For all other portions of these policy forms, a small employer carrier shall comply with Article 3.42 of this code as it relates to policy form approval and with the Texas Health Maintenance Organization Act (Article 20A.01 et seq., Vernon's Texas Insurance Code) as it relates to approval of an evidence of coverage. A small employer carrier may not offer these [~~three~~] benefit plans through a policy form or evidence of coverage that does not comply with this chapter [~~article~~].

SECTION 9. Subchapter E, Chapter 26, Insurance Code, is amended by adding Article 26.44A to read as follows:

Art. 26.44A. BENEFIT PLANS. (a) The commissioner by rule shall establish the coverage requirements for the catastrophic care benefit plan and

the basic coverage benefit plan. The commissioner shall develop prototype policies for use by small employer carriers that include all contractual provisions required to produce an entire contract in accordance with this article and this code.

(b) Coverage under the catastrophic care benefit plan must be designed to provide necessary coverage in the event of catastrophic illness or injury. The commissioner shall establish deductibles and coinsurance requirements at levels that permit options for the insured to obtain affordable catastrophic coverage.

(c) The commissioner by rule shall establish coverage requirements for the basic coverage benefit plan. Coverage under the basic coverage benefit plan must be designed to provide basic hospital, medical, and surgical coverages. Benefits under the plan are limited to basic care requirements for illness and injury.

(d) The benefits provisions of the benefit plan policies must include the following:

- (1) all required or applicable definitions;
- (2) a list of any exclusions or limitations to coverage;
- (3) a description of covered services required under the plan; and
- (4) the deductible and coinsurance options that are required or permitted under the plan.

SECTION 10. Subchapter E, Chapter 26, Insurance Code, is amended by adding Article 26.44B to read as follows:

Art. 26.44B. ALCOHOL AND SUBSTANCE ABUSE BENEFITS. If the small employer basic coverage benefit plan developed by the commissioner includes coverage for alcohol and substance abuse benefits, the employees of a small employer group may accept and small employer carriers may offer the basic coverage benefit plan without providing coverage for alcohol and substance abuse benefits if:

(1) at least 50 percent of the employees waive in writing the benefits and indicate in writing that they have undergone alcoholism or substance abuse treatment or counseling within the last three years; and

(2) the exclusion from coverage of alcohol and substance abuse applies to only those employees.

SECTION 11. Article 26.48, Insurance Code, is amended to read as follows:

Art. 26.48. HEALTH MAINTENANCE ORGANIZATION PLANS. (a) Instead of the small employer health benefit plans described by this subchapter, a health maintenance organization may offer:

(1) a state-approved health benefit plan that complies with the requirements of Title XIII [X], Public Health Service Act (42 U.S.C. Section 300e et seq.) and rules adopted under that Act;

(2) a plan developed by the commissioner under Article 26.44A of this code and additional benefit riders to the plan; or

(3) a point-of-service contract in connection with an insurance carrier that includes optional coverage for out-of-area services, emergency care, or out-of-network care.

(b) A contract offered by an insurance carrier under Subsection (a)(3) of this article is subject to all provisions of this chapter unless specifically

exempted. The insurance carrier with which the health maintenance organization contracts for a point-of-service contract is not required to otherwise make available the benefit plans adopted under Subchapter E of this chapter if the insurance carrier's small employer products are limited to the point-of-service contract.

SECTION 12. Article 26.49, Insurance Code, is amended to read as follows:

Art. 26.49. PREEXISTING CONDITION AND WAITING PERIOD PROVISIONS. (a) ~~A [Except as provided by Article 26.21(g) of this code, a]~~ preexisting condition provision in a small employer health benefit plan may not apply to expenses incurred on or after the expiration of the 12 months following [first anniversary of] the initial effective date of coverage of the enrollee or late enrollee.

(b) A preexisting condition provision in a small employer health benefit plan may not apply to coverage for a disease or condition other than a disease or condition[~~;~~

~~[(1)]~~ for which medical advice, diagnosis, care, or treatment was recommended or received during the six months before the effective date of coverage[~~;~~ or

~~[(2) that would have caused an ordinary, prudent person to seek medical advice, diagnosis, care, or treatment during the six months before the effective date of coverage].~~

(c) A preexisting condition provision in a small employer health benefit plan may not apply to an individual who was continuously covered for a minimum period of 12 months by a health benefit plan that was in effect up to a date not more than 60 days before the effective date of coverage under the small employer health benefit plan, excluding any waiting period.

(d) ~~[A preexisting condition provision may exclude coverage for a pregnancy existing on the effective date of the coverage, except as provided by Subsection (c) of this article.]~~

~~[(e)]~~ In determining whether a preexisting condition provision applies to an individual covered by a small employer health benefit plan, the small employer carrier shall credit the time the individual was covered under a previous health benefit plan if the previous coverage was in effect at any time during the 12 months preceding the effective date of coverage under a small employer health benefit plan. If the previous coverage was issued by a health maintenance organization, any waiting period that applied before that coverage became effective also shall be credited against the preexisting condition provision period.

(e) A carrier that does not use a preexisting condition provision in any of its health benefit plans may impose an affiliation period. For purposes of this subsection, "affiliation period" means a period not to exceed 90 days for new enrollees and not to exceed 180 days for late enrollees during which premiums are not collected and the issued coverage is not effective.

(f) Subsection (e) of this article does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan. However, any carrier-imposed waiting period may not exceed 90 days and must be used in lieu of a preexisting condition provision.

SECTION 13. Article 26.54, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) There is no liability on the part of, and no cause of action of any nature arises against, a member of the board of directors for action or omission performed in good faith in the performance of powers and duties under this subchapter.

SECTION 14. Article 26.71, Insurance Code, is amended to read as follows:

Art. 26.71. FAIR MARKETING. (a) Each small employer carrier shall market the small employer health benefit plan through properly licensed agents to eligible small employers in this state. Each small employer purchasing a small employer health benefit plan shall be given a summary of the benefit plans established by the commissioner under Subchapter E of this chapter. The commissioner shall prescribe the format of the summary. The [must affirm that the] agent shall offer and explain each of the plans to the small employer on inquiry and request by the small [who sold the plan offered and explained all three plans to that] employer.

~~(b) [The department may require periodic demonstration by small employer carriers and agents that those carriers and agents are marketing or issuing small employer health benefit plans to small employers in fulfillment of the purposes of this article.~~

~~[(c)]~~ The department may require periodic reports by small employer carriers and agents regarding small employer health benefit plans issued by those carriers and agents. The reporting requirements shall include information regarding case characteristics and the numbers of small employer health benefit plans in various categories that are marketed or issued to small employers.

SECTION 15. Article 26.75, Insurance Code, is amended to read as follows:

Art. 26.75. RULES. The commissioner ~~[board]~~ may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of small employer health benefit plans to small employers in this state.

SECTION 16. Section 1(d)(3)(A)(i), Article 3.51-6, Insurance Code, is amended to read as follows:

(i) An insurer shall first offer to each employee, member, or dependent a conversion policy without evidence of insurability if written application for and payment of the first premium is made not later than the 31st day after the date of the termination. The converted policy shall provide similar ~~[the same]~~ coverage and benefits as provided under the group policy or plan. The lifetime maximum benefits shall be computed from the initial date of the employee's, member's, or dependent's coverage with the group. An insurer shall offer and an employee, member, or dependent may elect lesser coverage and benefits. An employee, member, or dependent shall not be entitled to have a converted policy or plan issued if termination of the insurance occurred because: (aa) such person failed to pay any required premium; or (bb) any discontinued group coverage was replaced by similar group coverage within 31 days.

SECTION 17. Articles 26.45, 26.46, 26.47, and 26.47A, Insurance Code, are repealed effective June 1, 1996.

SECTION 18. The commissioner of insurance shall develop and adopt rules establishing small employer health benefit plans under Subchapter E, Chapter 26, Insurance Code, as amended by this Act, not later than January 1, 1996.

SECTION 19. (a) Each small employer health benefit plan, including prototype plans developed by the commissioner of insurance, under Chapter 26, Insurance Code, as amended by this Act, shall be offered, delivered, or issued for delivery to small employers beginning June 1, 1996.

(b) A small employer health benefit plan issued before September 1, 1993, is governed by the law in effect immediately before September 1, 1993, except that on and after September 1, 1995, those plans are subject to the provisions of Subchapter D, Chapter 26, Insurance Code, as amended by this Act.

(c) A small employer health benefit plan issued on or after September 1, 1993, but before June 1, 1996, must comply with Chapter 26, Insurance Code, as amended by this Act, beginning on the first renewal date of the health benefit plan following June 1, 1996.

(d) Article 26.38, Insurance Code, as amended by this Act, applies to small employer health benefit plans offered, issued, or issued for delivery on or after September 1, 1995.

(e) Article 3.51-6, Insurance Code, as amended by this Act, applies only to a health benefit plan offered, delivered, or issued for delivery on or after June 1, 1996.

SECTION 20. This Act takes effect September 1, 1995.

SECTION 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Averitt moved to adopt the conference committee report on **HB 369**.

The motion prevailed.

HB 814 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Coleman submitted the following conference committee report on **HB 814**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 814** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis
Gallegos
Galloway

Coleman
Dukes
Howard
Maxey
Rusling

On the part of the Senate

On the part of the House

HB 814, A bill to be entitled An Act relating to the restoration, operation, and maintenance of certain historic cemeteries.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 8, Health and Safety Code, is amended by adding Chapter 715 to read as follows:

CHAPTER 715. CERTAIN HISTORIC CEMETERIES

Sec. 715.001. DEFINITIONS. In this chapter:

(1) "Burial park," "cemetery purposes," "crematory," "mausoleum," and "plot" have the meanings assigned by Section 711.001.

(2) "Cemetery" means a place that is used for interment, including a graveyard, burial park, or a mausoleum located on the grounds of a graveyard or burial park.

(3) "Nonprofit corporation" means a corporation not for profit subject to the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes).

Sec. 715.002. PETITION OF NONPROFIT CORPORATION. A nonprofit corporation organized under this chapter to restore, operate, and maintain a historic cemetery may petition the district court of the county in which the cemetery is located to authorize the nonprofit corporation to restore, operate, and maintain the cemetery.

Sec. 715.003. PARTIES TO ACTION. An action commenced under this chapter shall be brought by the incorporators of the nonprofit corporation on behalf of the nonprofit corporation. The necessary parties to the action on which citation shall be served under Section 715.006 are:

(1) the record owners of the real property comprising the historic cemetery;

(2) the owners of plots in the cemetery, who may be designated as a class in the petition; and

(3) the Texas Historical Commission.

Sec. 715.004. CONTENTS OF PETITION. (a) A petition filed by a nonprofit corporation under this chapter must contain a legal description of the real property comprising the historic cemetery and must aver to the court that:

(1) the nonprofit corporation, through its members and incorporators, has a religious, ethnic, historic, or cultural relationship to the cemetery;

(2) the cemetery was established more than 75 years before the date the action was commenced;

(3) a viable organization of plot owners of the cemetery does not exist; and

(4) the cemetery threatens or endangers the public health, safety, comfort, or welfare.

(b) The petition must be accompanied by the written plan described by Section 715.005.

Sec. 715.005. WRITTEN PLAN. (a) The written plan accompanying the nonprofit corporation's petition must include:

(1) a description of the actions to be taken by the nonprofit corporation to restore, operate, and maintain the historic cemetery, which must include:

(A) repair of any fences;

(B) straightening and resetting of memorials or embellishments in the cemetery that are a threat or danger to the public health, safety, comfort, or welfare; and

(C) taking proper steps to restore and continuously operate and maintain the cemetery in an orderly and decent fashion that does not endanger the public health, safety, comfort, or welfare;

(2) the anticipated costs of the actions described under Subdivision (1);

(3) the time that the actions described by Subdivision (1) will be commenced and the time that it is anticipated the actions will be completed;

(4) a description of the actions to be taken by the nonprofit corporation for the proper conduct of its business and for the protection of the cemetery and the principles, plans, and ideals on which the cemetery was established;

(5) the percentage of the total purchase price of each plot in the cemetery sold and conveyed by the nonprofit corporation to be deposited in the trust fund established under Section 715.011, which must be at least 10 percent of the total purchase price of the plot; and

(6) a description of the records to be maintained by the nonprofit corporation, including records regarding:

(A) the sale of plots in the cemetery;

(B) the interments in the cemetery;

(C) the total purchase price received from the sale of each plot in the cemetery;

(D) the percentage of the total purchase price of each plot in the cemetery deposited in the trust fund established under Section 715.011; and

(E) the income received by the nonprofit corporation from the trust fund established under Section 715.011 and the manner in which the income is used by the nonprofit corporation for the maintenance and care of the cemetery.

(b) After the written plan is filed, the court may require that the nonprofit corporation modify the plan to include other matters specified by the court.

Sec. 715.006. SERVICE OF CITATION. (a) Before the 31st day after the date an action is commenced by a nonprofit corporation under this chapter, the nonprofit corporation shall cause citation to be issued and served by certified mail, return receipt requested, on:

(1) the record owners of the real property comprising the cemetery at their last known addresses;

(2) the owners of plots in the cemetery at their last known addresses;

(3) the Texas Historical Commission at its office in Austin, Texas; and

(4) the county auditor of the county in which the cemetery is located.

(b) The citation must be accompanied by a copy of the petition.

(c) If the address or identity of a plot owner is not known and cannot be ascertained with reasonable diligence, service by publication shall be made on the plot owner by publishing notice at least three times in a newspaper of general circulation in the county in which the cemetery is located. If there is not a newspaper of general circulation in the county in which the cemetery is located, the notice may be published in a newspaper of general circulation in an adjoining county.

Sec. 715.007. HEARING. (a) Not later than the 90th day after the date the petition is filed, the court shall hold a hearing on the petition.

(b) Notice of the hearing shall be given by the nonprofit corporation to the parties listed in Section 715.003 not later than the 30th day before the date of the hearing.

(c) The notice shall be given in the manner prescribed by Section 715.006 for service of citation.

(d) At the hearing, each of the parties listed in Section 715.003 shall be given an opportunity to be heard by the court and to answer the petition of the nonprofit corporation.

Sec. 715.008. COURT ORDER. (a) The court shall issue an order authorizing the nonprofit corporation to restore, operate, and maintain the cemetery if the court finds that:

(1) the facts stated in the petition filed by a nonprofit corporation under this chapter are true and correct;

(2) the written plan accompanying the petition demonstrates the nonprofit corporation's ability to restore, operate, and maintain the historic cemetery in accordance with this chapter; and

(3) authorizing the nonprofit corporation to restore, operate, and maintain the cemetery is in the best interest of the public.

(b) The written plan must be incorporated in the court's order.

(c) The court's order is binding on all parties to the action.

(d) The court retains continuing jurisdiction to monitor and review compliance with the court's order.

Sec. 715.009. NONPROFIT CORPORATION. (a) The members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery are the plot and property owners of the cemetery.

(b) Each plot owner may exercise the rights and privileges of a member of the nonprofit corporation without regard to whether the plot owner acquired the plot before or after the nonprofit corporation was organized.

Sec. 715.010. ORGANIZATIONAL MEETING. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery shall, not later than the 10th day after the date of the order of the court under Section 715.008:

(1) publish notice of the time and place of the organizational meeting of the members of the nonprofit corporation in a newspaper having general circulation in the county in which the cemetery is located or, if there is no newspaper of general circulation in the county in which the cemetery is located, in a newspaper of general circulation in an adjoining county; and

(2) post written notice of the time and place of the meeting at the cemetery.

(b) The notice published under Subsection (a)(1) must be published not later than the 30th day before the date of the meeting and repeated twice before the date of the meeting. The notice may not be published more than once a week.

(c) The written notice posted under Subsection (a)(2) must be posted not later than the 30th day before the date of the hearing and must remain posted until the date of the hearing.

(d) At the organizational meeting of the members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery, a

majority of the members present and voting at the meeting shall elect a board of directors of the nonprofit corporation. Directors and officers are not required to be members of the nonprofit corporation.

Sec. 715.011. POWERS AND DUTIES OF NONPROFIT CORPORATION; TRUST FUND. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may divide cemetery property into lots and subdivisions for cemetery purposes and charge reasonable assessments on the property for the purposes of general improvement and maintenance of the cemetery.

(b) The nonprofit corporation may sell and convey the exclusive right of sepulture in any unsold plot in the cemetery if, before the sale and conveyance of any right of sepulture, the nonprofit corporation establishes a trust fund to provide for the perpetual maintenance of the cemetery.

(c) The county auditor of the county in which the cemetery is located shall act as the trustee of the trust fund.

(d) The nonprofit corporation shall deposit in the trust fund the amount required under the written plan incorporated in the court's order not later than the 20th day after the last day of the month in which the total purchase price of a plot has been paid in full.

(e) The nonprofit corporation shall file a monthly statement with the county auditor, signed by the president and secretary of the nonprofit corporation, that verifies that all funds required to be deposited in the trust fund during the preceding month have been deposited in the trust fund and that any income disbursed from the trust fund during the preceding month was used by the nonprofit corporation for the maintenance and care of the cemetery.

(f) The principal of a trust fund established under this section may not be reduced voluntarily, and it must remain inviolable.

(g) The trust fund and the trustee are governed by Title 9, Property Code.

(h) The trustee may receive and hold as part of the trust fund any property contributed as a gift or grant to the trust fund for the perpetual maintenance of the historic cemetery.

(i) The income of the trust fund may be applied in the manner the directors of the nonprofit corporation determine to be for the best interest of the cemetery and may be used only for the maintenance and care of the cemetery.

(j) A district court of the county in which the historic cemetery is located shall appoint a suitable successor trustee of a trust fund established under this section if the county auditor resigns the position of trustee of the trust fund or fails to act as its trustee.

(k) The county auditor or other person who acts as the trustee of a trust fund established under this section is not civilly or criminally liable for acts performed in the good faith administration of the trust fund.

Sec. 715.012. CREMATORY PROHIBITED. A nonprofit corporation authorized to restore, operate, and maintain a cemetery under this chapter may not construct, establish, or maintain a crematory.

Sec. 715.013. ADJACENT OR CONTIGUOUS CEMETERY. A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may not acquire land for cemetery purposes that is adjacent or contiguous to the cemetery unless the adjacent or contiguous land is operated as a perpetual care

cemetery under Chapter 712. The nonprofit corporation may not petition the district court of the county in which the cemetery is located to remove the dedication with respect to all or any portion of the cemetery.

Sec. 715.014. CEMETERY OPEN TO PUBLIC. A historic cemetery restored, operated, and maintained by a nonprofit corporation under this chapter must remain open to the public.

Sec. 715.015. EXEMPTION. This chapter does not apply to:

(1) a perpetual care cemetery; or

(2) a family cemetery.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Coleman moved to adopt the conference committee report on **HB 814**.

The motion prevailed.

SB 421 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Krusee submitted the conference committee report on **SB 421**.

Representative Krusee moved to adopt the conference committee report on **SB 421**.

The motion prevailed.

HB 752 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Rhodes submitted the following conference committee report on **HB 752**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 752** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister

West

Lucio

Sims

Turner

On the part of the Senate

Rhodes

Oakley

Driver

Edwards

McCoulskey

On the part of the House

HB 752, A bill to be entitled An Act relating to eligibility for certain law enforcement training programs and examinations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 415.031, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The commission by rule shall establish minimum qualifications for a person to enroll in a training program that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes. A person who is disqualified by law to be an officer or county jailer may not enroll in a training program described by this subsection.

SECTION 2. Section 415.056, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The commission by rule shall establish minimum qualifications for a person to be examined under this section. A person who is disqualified by law to be an officer or county jailer may not take an examination under this section.

SECTION 3. (a) This Act takes effect September 1, 1995.

(b) The Commission on Law Enforcement Officer Standards and Education shall adopt the rules required by Sections 415.031(e) and 415.056(e), Government Code, as added by this Act, by not later than January 1, 1996.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Rhodes moved to adopt the conference committee report on **HB 752**.

The motion prevailed.

HR 1195 - ADOPTED

The speaker laid before the house the following privileged resolution:

By Romo,

HR 1195

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on House Bill No. 1013 to consider and take action on the following matter:

House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit text that is not in disagreement in Section 61.084, Education Code. The omitted text reads as follows:

Sec. 61.084. BOND ISSUANCE BY TEXAS PUBLIC FINANCE AUTHORITY. (a) The Texas Public Finance Authority shall exercise the board's authority provided by law to issue bonds and refunding bonds. The Texas Public Finance Authority is subject to all rights, duties, and conditions provided by law with respect to issuance of bonds by the board.

(b) For purposes of Sections 50b, 50b-1, 50b-2, and 50b-3, Article III, Texas Constitution, the authority is the successor to the board.

Explanation: This change is necessary to conform the conference committee report to a senate amendment striking the Texas Higher Education Coordinating Board from the bill.

The resolution was adopted without objection.

HB 1013 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Romo submitted the following conference committee report on **HB 1013**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1013** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Barrientos
Turner
Truan
Lucio

Romo
Patterson
Carona
Elkins
Gutierrez

On the part of the Senate

On the part of the House

HB 1013, A bill to be entitled An Act relating to the powers and duties of the Texas Public Finance Authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 9B(a), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) With respect to all bonds authorized to be issued by the Texas National Guard Armory Board, Texas National Research Laboratory Commission, Parks and Wildlife Department, Texas Department of Commerce, Texas Agricultural Finance Authority, and all institutions of higher education authorized to issue bonds under Chapter 55, Education Code, the authority has the exclusive authority to act on behalf of those entities in issuing bonds on their behalf. In connection with those issuances and with the issuance of refunding bonds on behalf of those entities, the authority is subject to all rights, duties, and conditions surrounding issuance previously applicable to the issuing entity under the statute authorizing the issuance. All references in an authorizing statute to the entity on whose behalf the bonds are being issued apply equally to the authority in its capacity as issuer on behalf of the entity.

SECTION 2. The Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes) is amended by adding Section 9D to read as follows:

Sec. 9D. PARTICIPATION OF CERTAIN BUSINESSES IN ISSUANCE OF OBLIGATIONS. (a) The authority shall make an effort to overcome the underuse of historically underutilized businesses as businesses receiving contracts for the purchase of services and supplies used in connection with the issuance of obligations issued by the authority.

(b) The authority shall submit a comprehensive annual report to the governor detailing its use of historically underutilized businesses.

(c) In this section, "historically underutilized business" has the meaning as assigned by Section 481.101, Government Code.

(d) The rules adopted under this section may not be used to discriminate against any citizen on the basis of sex, race, color, creed, or national origin.

(e) This section does not create a new cause of action, either public or private.

SECTION 3. Subchapter D, Chapter 58, Agriculture Code, is amended by adding Section 58.041 to read as follows:

Sec. 58.041. BOND ISSUANCE BY TEXAS PUBLIC FINANCE AUTHORITY. The Texas Public Finance Authority shall exercise the board's authority provided by law to issue bonds and refunding bonds. The Texas Public Finance Authority is subject to all rights, duties, and conditions provided by law with respect to issuance of bonds by the board.

SECTION 4. Subchapter A, Chapter 481, Government Code, is amended by adding Section 481.0091 to read as follows:

Sec. 481.0091. BOND ISSUANCE BY TEXAS PUBLIC FINANCE AUTHORITY. The Texas Public Finance Authority shall exercise the department's authority provided by law to issue bonds and refunding bonds. The Texas Public Finance Authority is subject to all rights, duties, and conditions provided by law with respect to issuance of bonds by the department.

SECTION 5. The Texas Public Finance Authority, with the assistance of the General Services Commission, shall study the benefits to the state of purchasing the following property and issuing bonds for that purpose:

ALL THAT CERTAIN PARCEL OR TRACT OF LAND BEING ALL OF LOTS 1, 2, 3, 4 AND 5, OUTLOT 41, DIVISION "E" OF THE GOVERNMENT OUTLOTS OF THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT RECORDED IN THE GENERAL LAND OFFICE OF THE STATE OF TEXAS; SAID LOTS 1, 2, 3, 4 AND 5 BEING CONVEYED TO THE FEDERAL DEPOSIT INSURANCE CORPORATION BY SUBSTITUTE TRUSTEE'S DEED RECORDED IN VOLUME 11579, PAGE 111 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found at the intersection of the north right-of-way line of West 17th Street and the west right-of-way line of Colorado Street for the southeast corner and POINT OF BEGINNING of the herein described tract;

THENCE, with the north right-of-way line of West 17th Street, the following two (2) courses:

(1) N7037°29'W a distance of 46.01 feet to a 5/8" iron rod found in asphalt at the southwest corner of the above described Lot 5; and

(2) N7039'23"W, pass a punch hole inside an "X" cut at edge of concrete sidewalk at 46.00 feet, and continuing on for a total distance of 230.01 feet to an "X" found on the concrete base of a metal sign at the intersection with the east right-of-way line of Lavaca Street for the southwest corner of this tract;

THENCE, with the east right-of-way line of Lavaca Street, N1901'09"E a distance of 127.98 feet to a 1/2" iron rod found in asphalt at the intersection with the south right-of-way line of a twenty (20)-foot alley for the northwest corner of this tract;

THENCE, with the south right-of-way line of said twenty (20)-foot alley, the following three (3) courses:

(1) S7047'50"E a distance of 183.99 feet to a 1/2" iron rod found in asphalt at the northwest corner of the above described Lot 4;

(2) S7040'47"E a distance of 46.07 feet to a 1/2" iron rod found in asphalt at the northwest corner of said Lot 5; and

(3) S7010'49"E a distance of 45.96 feet to a hilty nail found in asphalt at the intersection with the west right-of-way line of Colorado Street for the northeast corner of this tract;

THENCE, with the west right-of-way line of Colorado Street, S1901'00"W a distance of 128.10 feet to the POINT OF BEGINNING, and containing 0.813 acre (35,402 square feet) of land, more or less.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Romo moved to adopt the conference committee report on **HB 1013**.

The motion prevailed.

SB 667 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Janek submitted the conference committee report on **SB 667**.

Representative Janek moved to adopt the conference committee report on **SB 667**.

The motion prevailed.

SB 744 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Holzheuser submitted the conference committee report on **SB 744**.

(Moffat now present)

Representative Holzheuser moved to adopt the conference committee report on **SB 744**.

A record vote was requested.

The motion prevailed by (Record 583): 98 Yeas, 39 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Chisum; Coleman; Combs; Cook; Corte; Crabb; Craddick; Cuellar, H.; Culberson; Davila; Davis; Dear; Delisi; Denny; Driver; Dukes; Edwards; Ehrhardt; Eiland; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Haggerty; Hamric; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Howard; Hunter, B.; Hunter, T.; Janek; Junell; Kamel; Krusee; Kubiak; Longoria; Luna; Madden; Maxey; McCall; McCoulskey; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pitts; Puente; Rabuck; Rangel; Raymond; Rhodes; Rodriguez; Romo; Rusling; Seidlits; Shields; Siebert; Smithee; Solomons; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Turner, S.; Uher; Willis; Wolens.

Nays — Conley; Counts; Cuellar, R.; De La Garza; Duncan; Dutton; Elkins; Finnell; Gutierrez; Harris; Hartnett; Horn; Jackson; Johnson; Jones, D.; Kuempel; Lewis, R.; McDonald; Munoz; Pickett; Place; Ramsay; Reyna; Sadler; Saunders; Serna; Solis; Staples; Thompson; Van de Putte; Walker; West; Williamson; Wilson; Wohlgemuth; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Alvarado; Carona; Clemons; Danburg; Farrar; Gallego; Hudson; Jones, J.; King; Lewis, G.; Marchant; Price.

STATEMENTS OF VOTE

I was shown voting no on Record No. 583. I intended to vote yes.

Serna

When Record No. 583 was taken, I voted but the vote didn't register. I would have voted yes.

Farrar

When Record No. 583 was taken, I was in the Senate chamber attempting to get a conference committee report approved. I would have voted no.

Gallego

When Record No. 583 was taken, I was in the house but away from my desk. I would have voted yes.

King

HR 1219 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1219**, suspending the limitations on the conferees for **SB 374**.

HR 1218 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1218**, suspending the limitations on the conferees for **HB 1367**.

SB 776 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Junell submitted the conference committee report on **SB 776**.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today because of important business in the district:

Wilson on motion of Corte.

SB 776 - (consideration continued)

Representative Saunders moved to adopt the conference committee report on **SB 776**.

A record vote was requested.

The motion prevailed by (Record 584): 132 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Chisum; Coleman; Combs; Conley; Cook; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Delisi; Denny; Driver; Dukes; Duncan; Ehrhardt; Eiland; Elkins; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Carona; Clemons; Corte; Dear; Dutton; Edwards; Farrar; Hernandez; Hudson; Luna; Madden; Marchant; Price; Raymond; Smithee; West.

The speaker stated that **SB 776** was passed subject to the provisions of Article III, Section 49a, of the Texas Constitution.

STATEMENTS OF VOTE

When Record No. 584 was taken, I was in the house but away from my desk. I would have voted yes.

Corte

When Record No. 584 was taken, I was in the house but away from my desk. I would have voted yes.

West

SB 776 - STATEMENT OF LEGISLATIVE INTENT

We, the undersigned members of the Texas House of Representatives, 74th Legislature, are all members of the House Environmental Regulations Committee which heard **SB 776** and which added the waste tire recovery program to the two paragraph emergency appropriation bill which was passed to the House from the Texas Senate. We were active members of the committee and were also involved in the debate of this legislation as it passed the Texas House on April 27, 1995. I, Robert Talton, offered the amendment which became the major portion of **SB 776**. Additionally, each of us served on the joint House/Senate Conference Committee which drafted the final provisions of **SB 776**. Because the Waste Tire Program details were added by the House, the details of **SB 776** were never debated on the floor of the Texas Senate. As such we felt as though the intent of its drafters should be clearly established for future reference. As such, this legislative intent is set forth hereinbelow.

For a waste tire energy recovery facility using whole tires as fuel it is contemplated that the following costs would be eligible for a grant. Eligible costs are those that are necessary to retrofit and enable the facility to store and use whole tires as fuel. Engineering, design, equipment, capital investment, equipment, installation, permitting, testing, fees—all of these types of expenses are intended to be eligible as long as they are necessary as defined by TNRCC. In addition, some of the waste tire energy recovery facilities will want to store a supply of tires on site and the costs associated with the storage and the staging area should be recoverable through a grant.

It is also contemplated that the grants in **SB 776** could be either reimbursements or advances. With the uncertainty about the time of payment, some grant recipients may choose to proceed with retrofitting and apply for grant money based on actual costs. Those persons would take whatever grant money they receive as a reimbursement. Others may prefer to apply for grants based on projected costs and take the money as an advance. There may be a need for the commission to approve a grant and pay it out in increments as well. This legislation grants the Commission the authority to do all of these.

Regarding the text on page 21, beginning at line 7, subsection g, the following legislative intent is to be stated. First, the \$6 million is not an absolute cap for payment to whole tire users. There is a possibility that more funds will be available through fund transfers as set forth in page 21, lines 7-11. At the end of the 3rd quarter, or in May, the commission will evaluate the funds that have not been spent or applied for. If the commission determines that any category of money will not be spent or applied for, then the Commission may transfer money to another category where there is a need. The Legislature did not intend for the Commission to transfer money away from a particular category of users without a hearing to first determine that the funds will not be used for the purpose specified in this legislation. It is contemplated that the Commission is required to adopt rules regarding the transfer of money. However, the transfer of funds should not occur if the funds are applied for but not spent. This is particularly important for the grant programs where the commission is likely to have a slower start distributing money. If the Commission has applications for money or reasonably expects applications for money, it would not transfer funds.

On the bottom of page 7, the bill states: "the Commission each month shall pay a waste tire processor that shreds scrap tires and meets the requirements of this section and rules adopted under this section an amount equal to \$.80 for each weighed tire shredded by the processor during the preceding calendar month." However, on page 20 at line 13, it sets out an amount of "up to \$.80 per weighed tire unit". The intent of this language is to compensate waste tire energy recovery facilities \$.80 cents per tire—no more, no less. If a cement kiln or boiler, for example, burns a whole tire as a source of energy, the compensation for that tire would be \$.80.

There is a new provision added on page 8, lines 20-24 regarding PEL tires. The legislation requires all processors and waste tire energy recovery facilities that apply for payment to manage a certain percentage of PEL tires per month. The referenced provision waives that requirement across the board if the PEL sites are being handled by contract. There is \$7.04 million set aside in this bill to fund clean-up of the remaining PEL sites. The Legislature expects all of those tires to be handled under contract and thus the waiver will be triggered. In such case, neither processors nor waste tire energy recovery facilities will be required to demonstrate use of any PEL tires to get paid. To say it another way, the waiver applies to processors and waste tire energy recovery facilities and covers Section 361.477c(3)(c) and Section 361.4771(b)(7).

On page 6 at line 17, there is a reference to "waste tire recycling facility." The definition section does not specifically define a "waste tire recycling facility." However, the legislative intent is that grant money be made available only to facilities that manufacture a useful product with a certified end market. On page 17, lines 8-13, there is a list of products that would not qualify. Further, there is not a reimbursement program for waste tire recyclers. This legislation provides for only a grant program to cover construction of the recycling facility.

On page 7 at line 20, there is a reference to waste tire recyclers being reimbursed. It is not intended that these recyclers be paid for using tires, or on a per tire basis. They may be eligible for a reimbursed grant however, if they start building or retrofitting a tire recycling facility before the grant money is provided.

On page 14 at line 16, as part of the registration process, whole waste tire energy recovery facilities "must demonstrate energy recovery activities comply with applicable air emission control standards". It is not intended that new test burns are required as part of the registration process because this is not a permit application process which would require a test burn.

On page 20 at line 7, grants are to be provided to "waste tire energy recovery facilities that are not using tire-derived fuel and apply for assistance...." It is the intent of the Legislature that waste tire energy recovery facilities that have utilized tire derived fuel prior to September 1, 1995, are not permitted to receive grant money. As such, if a waste tire energy recovery facility used tire derived fuel prior to September 1, 1995, that facility is not eligible for grant money.

Also, the Act is clear that beginning January 1, 1996, the TNRCC may reimburse processors for shredded tires only if the processor has a binding agreement with a viable end user. Although the bill does not define "legitimate

end user," the intent is that the TNRCC will make a determination on what or who is a legitimate end use or user. And, the Commission should make certain that in its determination, no sham companies set up merely to circumvent the intent of this legislation are qualified as a legitimate end user.

Talton
Dukes
Chisum

SB 840 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative De La Garza submitted the conference committee report on **SB 840**.

Representative De La Garza moved to adopt the conference committee report on **SB 840**.

The motion prevailed.

SB 1396 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dukes submitted the conference committee report on **SB 1396**.

Representative Dukes moved to adopt the conference committee report on **SB 1396**.

The motion prevailed.

HB 958 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative B. Turner submitted the following conference committee report on **HB 958**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 958** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth
Cain
Sibley
Armbrister

B. Turner
Finnell
Cook
Counts
Oliveira

On the part of the Senate

On the part of the House

HB 958, A bill to be entitled An Act relating to the authority of certain counties to impose a county hotel occupancy tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 352.002(a) and (d), Tax Code, are amended to read as follows:

(a) The commissioners courts of the following counties by the adoption of an order or resolution may impose a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs \$2 or more each day, and is ordinarily used for sleeping:

(1) a county that has a population of more than two million;

(2) a county that has a population of 90,000 or more, borders the Republic of Mexico, and does not have three or more cities that each have a population of more than 17,500;

(3) a county in which there is no municipality;

(4) a county in which there is located an Indian reservation under the jurisdiction of the United States government;

(5) a county that has a population of 17,500 or less, that has no more than one municipality with a population of less than 2,500, and that borders two counties located wholly in the Edwards Aquifer Authority established by Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993 [in which there is located a horse racing track licensed as a class 1 or class 2 racetrack under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes)];

(6) a county that borders the Gulf of Mexico;

(7) a county that has a population of less than 5,000, that borders the Republic of Mexico, and in which there is located a major observatory; ~~[and]~~

(8) a county that has a population of 10,000 or less and borders the Toledo Bend Reservoir;

(9) a county that has a population of less than 10,000 and an area of less than 275 square miles;

(10) a county that has a population of 30,000 or less and borders Possum Kingdom Lake; and

(11) a county that borders the Republic of Mexico and has a population of more than 250,000 and less than 500,000.

(d) The tax imposed by a county authorized by Subsection (a)(4), (6), ~~[or]~~ (8), (10), or (11) to impose the tax does not apply to a hotel located in a municipality that imposes a tax under Chapter 351 applicable to the hotel.

SECTION 2. The heading to Section 352.1032, Tax Code, is amended to read as follows:

Sec. 352.1032. USE OF REVENUE: COUNTIES BORDERING EDWARDS AQUIFER AUTHORITY [WITH LICENSED RACETRACKS].

SECTION 3. Subchapter B, Chapter 352, Tax Code, is amended by adding Section 352.106 to read as follows:

Sec. 352.106. USE OF REVENUE; CERTAIN COUNTIES BORDERING MEXICO. The revenue from a tax imposed under this chapter by a county authorized to impose the tax by Section 352.002(a)(11) may be used for the bond debt service, construction, maintenance, or operation of a special events facility with a seating capacity of at least 8,000.

SECTION 4. Section 352.006, Tax Code, is repealed.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative B. Turner moved to adopt the conference committee report on **HB 958**.

A record vote was requested.

The motion prevailed by (Record 585): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Carona; Danburg; Hudson; Marchant; Price; Rhodes; Serna.

HB 2027 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Yarbrough submitted the following conference committee report on **HB 2027**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2027** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Gallegos

Yarbrough

Patterson

Solomons

Truan

Luna

On the part of the Senate

On the part of the House

HB 2027, A bill to be entitled An Act relating to the regulation of tanning facilities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 145.002, Health and Safety Code, is amended to read as follows:

Sec. 145.002. DEFINITIONS. In this chapter:

(1) "Authorized agent" means an employee of the department designated by the commissioner to enforce this chapter.

(2) "Health authority" has the meaning assigned by Section 121.021 ~~[means a physician designated to administer state and local laws relating to public health].~~

(3) "Operator" means an owner of a tanning facility or an agent of an owner of a tanning facility.

(4) ~~[(3)]~~ "Person" means an individual, partnership, corporation, or association.

(5) ~~[(4)]~~ "Phototherapy device" means a piece of equipment that emits ultraviolet radiation and is used by a health care professional in the treatment of disease.

(6) ~~[(5)]~~ "Tanning device" means a device under Section 431.002 and includes any equipment, including a sunlamp, tanning booth, and tanning bed, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for the tanning of human skin. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

(7) ~~[(6)]~~ "Tanning facility" means a business that provides persons access to or use of tanning devices.

SECTION 2. Section 145.004, Health and Safety Code, is amended to read as follows:

Sec. 145.004. COMPLIANCE WITH ~~[FEDERAL]~~ LAW. (a) A tanning device used by a tanning facility must comply with all applicable federal and state laws and regulations.

(b) The Texas Department of Health may enforce Chapter 431 against a person who adulterates or misbrands a tanning device. The department may investigate a person accused of adulterating or misbranding a tanning device. For the purposes of this subsection, a tanning device is adulterated or misbranded if the tanning device would be an adulterated or misbranded device under Section 431.111 or 431.112. Health and Safety Code.

SECTION 3. Section 145.006, Health and Safety Code, is amended to read as follows:

Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall post a warning sign in a conspicuous location where it is readily visible by persons entering the establishment. The board by rule shall specify the size, design, and graphic design of the sign. The sign must have dimensions of at least 11 inches by 17 ~~[36] inches [on each side]~~ and must contain the following wording:

DANGER: ULTRAVIOLET RADIATION

Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, ~~[and]~~ bruising of the skin, and skin cancer.

Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women taking oral contraceptives who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO ~~[WILL NOT]~~ TAN FROM USE OF AN ULTRAVIOLET LAMP OR SUNLAMP.

(b) A tanning facility operator shall also post a warning sign at each tanning device in a conspicuous location that is readily visible to a person about to use the device. The board by rule shall specify the size, design, and graphic design of the sign. The sign must have dimensions of at least 11 inches by 17 [24] inches [on each side] and must contain the following wording [language]:

DANGER: ULTRAVIOLET RADIATION

1. Follow the manufacturer's instructions for use of this device.
2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.

3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.

4. Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.

5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women using oral contraceptives who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO ~~[WILL NOT]~~ TAN FROM USE OF THIS DEVICE.

(c) The Texas Department of Health shall include with a license application and an application for renewal of a license a description of the design standards required for signs under this section.

SECTION 4. Section 145.007, Health and Safety Code, is amended to read as follows:

Sec. 145.007. PROHIBITED CLAIMS ABOUT SAFETY. A tanning facility operator may not claim or distribute promotional materials that claim that using a tanning device is safe or free from risk or that using a tanning device will result in medical or health benefits.

SECTION 5. Section 145.008, Health and Safety Code, is amended to read as follows:

Sec. 145.008. OPERATIONAL REQUIREMENTS. (a) A tanning facility shall have an operator present during operating hours. The operator must:

- (1) be sufficiently knowledgeable in the correct operation of the tanning devices used at the facility;

- (2) instruct, [that the operator may] inform, and assist each customer in the proper use of the tanning devices;

(3) complete and maintain records required by this chapter; and
(4) explain or otherwise inform each customer initially using the tanning facility of:

(A) the potential hazards of and protective measures necessary for ultraviolet radiation;

(B) the requirement that protective eyewear be worn while using a tanning device;

(C) the possibility of photosensitivity or of a photoallergic reaction to certain drugs, medicine, or other agents when a person is subjected to the sun or ultraviolet radiation;

(D) the correlation between skin type and exposure time;

(E) the maximum exposure time to the facility's devices;

(F) the biological process of tanning; and

(G) the dangers of and the necessity to avoid overexposure to ultraviolet radiation.

(b) Before each use of a tanning device, the operator shall provide with each device clean and ~~[provide the customer with]~~ properly sanitized protective eyewear that protects the eyes from ultraviolet radiation and allows adequate vision to maintain balance. The protective eyewear shall be located in the immediate area of each tanning device and shall be provided without charge to each user of a tanning device. The operator may not allow a person to use a tanning device if that person does not use ~~[the]~~ protective eyewear ~~that meets the requirements of the United States Food and Drug Administration.~~ The operator also shall show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer of the tanning device.

(c) The tanning facility operator shall clean and properly sanitize the body contact surfaces of a tanning device after each use of the tanning device.

(d) ~~[(c)]~~ The tanning facility shall use a timer with an accuracy of at least plus or minus 10 percent of the maximum timer ~~[any selected time]~~ interval of the tanning device. The operator ~~[facility]~~ shall limit the exposure time of a customer on a tanning device to the maximum exposure time recommended by the manufacturer. A timer shall be located so that a customer cannot set or reset the customer's exposure time. The operator ~~[facility]~~ shall control the ~~[interior]~~ temperature of the customer contact surfaces of a tanning device and the surrounding area so that it may not exceed 100 degrees Fahrenheit.

(e) Before ~~[(d) Either each time]~~ a customer who is 18 years of age or older uses a tanning facility device for the first time and ~~[or]~~ each time a person executes or renews a contract to use a tanning facility device, the person must sign a written statement acknowledging that the person has read and understood the required warnings before using the device and agrees to use ~~[the]~~ protective eyewear ~~[that the tanning facility provides].~~

(f) ~~[(e)]~~ Before any person who is ~~[at least 14 years of age but]~~ younger than 18 years of age uses a tanning facility device for the first time, the person must give the operator ~~[tanning facility]~~ a written informed consent statement signed and dated by the person's parent or legal guardian stating that the parent or legal guardian has read and understood the warnings given by the tanning facility, consents to the minor's use of a tanning device, and agrees that the

minor will use ~~[the]~~ protective eyewear ~~[that the tanning facility provides]~~. In addition, a ~~[A]~~ person younger than 14 years of age must be accompanied by a parent or legal guardian who must remain at the tanning facility while the person younger than 14 years of age is ~~[when]~~ using a tanning device.

(g) When a tanning device is in use by a person, another person may not be allowed in the area of the tanning device.

(h) A record of each customer using a tanning device shall be maintained at the tanning facility at least until the third anniversary of the date of the customer's last use of a tanning device. The board by rule shall prescribe the form and content of the records. The record shall include:

(1) the date and time of the customer's use of a tanning device;

(2) the length of time the tanning device was used;

(3) any injury or illness resulting from the use of a tanning device;

and

(4) any written informed consent statement required to be signed under Subsection (e) or (f).

SECTION 6. Section 145.009, Health and Safety Code, is amended to read as follows:

Sec. 145.009. LICENSES ~~[PERMITS]~~. (a) A person may not operate a tanning facility unless the person holds a license ~~[permit]~~ issued by the department to operate the facility. Unless revoked or suspended, a license is valid until the first anniversary of the date the license was issued. A separate license is required for each tanning facility.

(b) The license ~~[permit]~~ shall be displayed in an open public area of the tanning facility.

(c) The board annually shall renew licenses ~~[permits]~~ after application for renewal is made on forms provided by the department for this purpose and after receipt of renewal fees.

(d) The department by rule may adopt a system under which licenses ~~[permits]~~ expire on various dates during the year. As part of this system the license fees and the annual renewal fees may be prorated on a monthly basis to reflect the actual number of months the license ~~[permit]~~ is valid.

(e) The department may revoke, ~~[cancel;]~~ suspend, suspend on an emergency basis, or probate by an emergency order of the commissioner, or the commissioner's designee a license ~~[permit]~~ to operate a tanning facility for:

(1) a failure to pay a license ~~[permit]~~ fee or an annual renewal fee for a license ~~[permit]~~;

(2) an applicant's acquisition or attempted acquisition of a license ~~[permit]~~ by fraud or deception;

(3) a violation of this chapter; ~~[or]~~

(4) a violation of a rule of the department adopted under this chapter;

or

(5) a violation of an order issued under this chapter.

(f) A license issued under this chapter shall be returned to the department if the tanning facility:

(1) ceases to operate as a business permanently;

(2) changes the ownership of the tanning facility;

(3) changes the location of the tanning facility; or

(4) changes the name of the business under which the tanning facility operates.

SECTION 7. Chapter 145, Health and Safety Code, is amended by adding Sections 145.0095 and 145.0096 to read as follows:

Sec. 145.0095. ISSUANCE OF LICENSE FOR CERTAIN FACILITIES PROHIBITED. (a) The department may not issue or renew a license under Section 145.009 with respect to a facility that:

(1) is operated under a license or permit as a sexually oriented business issued in accordance with Section 243.007, Local Government Code;

(2) offers, as its primary business, a service or the sale, rental, or exhibition of a device or other item that is intended to provide sexual stimulation or sexual gratification to a customer; or

(3) is owned or operated by a person who has been convicted of an offense under Chapter 21 or 43, Penal Code, or Section 71.02(a)(3), Penal Code.

(b) The department shall revoke a license issued with respect to a facility if the license may not be renewed under Subsection (a).

(c) For purposes of this section, a person has been convicted of an offense if the person receives community supervision for the offense after sentence is imposed or after the person enters a plea of guilty or nolo contendere and is placed on deferred adjudication.

Sec. 145.0096. CERTAIN ADVERTISING PROHIBITED. (a) A business described by Section 145.0095(a)(1) or (2) may not use the word "tan" or "tanning" in a sign or any other form of advertising.

(b) A person commits an offense if the person violates Subsection (a). Except as provided by Subsection (c), an offense under this subsection is a Class C misdemeanor.

(c) If it is shown on the trial of an offense under Subsection (b) that the person has previously been convicted of an offense under that subsection, the offense is a Class A misdemeanor.

SECTION 8. Section 145.010, Health and Safety Code, is amended to read as follows:

Sec. 145.010. FEES. (a) The board shall collect a fee for:

(1) a license issued or renewed; or

(2) a license that is modified ~~[The department shall set and collect a permit fee of \$50 and an annual permit renewal fee of \$35].~~

(b) The board may charge prorated or annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover not less than 50 percent of the costs to the department in:

(1) reviewing and acting on a license application;

(2) modifying or renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this chapter or rules relating to this chapter.

(d) The department shall use not less than 50 percent of the license fees collected for inspecting a licensed facility or enforcement of this chapter or a rule relating to this chapter. The remainder of the license fees collected shall be used to administer this chapter.

(e) A license fee received by the department shall be deposited in the state treasury to the credit of the food and drug registration fund. The fees are dedicated to the department for the administration and enforcement of this chapter.

SECTION 9. Section 145.011, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) A person who is required to maintain records under this chapter or a person in charge of the custody of those records shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority access to copy or verify the records at reasonable times.

SECTION 10. Section 145.012, Health and Safety Code, is amended to read as follows:

Sec. 145.012. EMERGENCY ORDER [INJUNCTION]. (a) The commissioner or the commissioner's designee may issue an emergency order relating to the operation of a tanning facility in the department's jurisdiction if the commissioner or the commissioner's designee determines that:

(1) operation of the tanning facility creates or poses an immediate and serious threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the threat will result in unreasonable delay.

(b) The commissioner or the commissioner's designee may issue an emergency order without notice or a hearing if the commissioner or the designee determines notice or a hearing is not practical under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under rules of the department [If the commissioner, an authorized agent, or a health authority finds that a person has violated or is violating or threatening to violate this chapter and that the violation or threat of violation creates an immediate threat to the health and safety of the public, the commissioner, authorized agent, or health authority may petition the district court for a temporary restraining order to restrain the violation or threat of violation].

[(b) If a person has violated or is violating or threatening to violate this chapter the commissioner, an authorized agent, or a health authority may petition the district court for an injunction to prohibit the person from continuing the violation or threat of violation.

[(c) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter, the district court shall grant any injunctive relief warranted by the facts.

[(d) Venue for a suit brought under this section is in the county in which the violation or the threat of violation is alleged to have occurred or in Travis County.]

SECTION 11. Chapter 145, Health and Safety Code, is amended by adding Sections 145.0121-145.0122 to read as follows:

Sec. 145.0121. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated or is violating this chapter or an order issued or a rule adopted under this chapter, the commissioner may request the attorney general or the district or county attorney or the municipal attorney of a municipality

in the jurisdiction where the violation is alleged to have occurred or may occur to institute a civil suit for:

- (1) an order enjoining the violation;
- (2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy if the department shows that the person has engaged in or is engaging in a violation;
- (3) the assessment and recovery of a civil penalty; or
- (4) both injunctive relief and a civil penalty.

(b) A civil penalty may not exceed \$25,000 a day for each violation. Each day the violation occurs constitutes a separate violation for the purposes of the assessment of a civil penalty.

(c) In determining the amount of the civil penalty, the court hearing the matter shall consider:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) the hazard to the health and safety of the public;
- (4) the demonstrated good faith of the person charged; and
- (5) any other matter as justice may require.

(d) Venue for a suit brought under this section is the municipality or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The commissioner or the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the commissioner under this section shall be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general shall be used by the attorney general.

Sec. 145.0122. ADMINISTRATIVE PENALTY. (a) The board or the board's designee may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed \$25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

- (c) The amount of the penalty shall be based on:
- (1) the person's history of previous violations;
 - (2) the seriousness of the violation;
 - (3) the hazard the violation caused or will cause to the health and safety of the public;
 - (4) the demonstrated good faith of the person charged with a violation;
- and

- (5) any other matter that justice may require.

(d) If the commissioner or the commissioner's designee determines a violation has occurred, the commissioner or the commissioner's designee may issue to the board or the board's designee a report that states the facts on which the determination is based and the commissioner's or the designee's

recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or the commissioner's designee or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner or the commissioner's designee shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the department. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review in a district court in Travis County contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) If the commissioner receives a copy of an affidavit under Subsection (k)(2), the commissioner may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

SECTION 12. Section 145.013, Health and Safety Code, is amended to read as follows:

Sec. 145.013. CRIMINAL PENALTY. (a) A person, other than a customer, commits an offense if the person [~~knowingly or recklessly~~] violates this chapter or a rule adopted under this chapter.

(b) An offense under this chapter is a Class A [~~Class C~~] misdemeanor.

SECTION 13. A person who holds a permit issued under Chapter 145, Health and Safety Code, before the effective date of this Act, and who would

be ineligible for issuance of that permit under Section 145.0095, Health and Safety Code, as added by this Act, may continue to operate as a tanning facility under the permit until the permit expires. A person may not renew a permit unless, at the time of renewal, the person is eligible for renewal of the license under Section 145.0095, Health and Safety Code, as added by this Act.

SECTION 14. (a) A change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense is committed, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act regarding the imposition of a civil or administrative penalty applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is covered by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

SECTION 15. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Yarbrough moved to adopt the conference committee report on **HB 2027**.

A record vote was requested.

The motion prevailed by (Record 586): 132 Yeas, 9 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Danburg; Davila; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Hernandez; Hightower; Hilbert; Hilderbran; Hirschi; Hochberg; Holzhauser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Siebert;

Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Yarbrough; Yost; Zbranek.

Nays — Corte; Counts; Culberson; Elkins; Heflin; Hill; Shields; Smithee; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Alonzo; Carona; Davis; Goolsby; Hudson; Luna; Price.

STATEMENT OF VOTE

When Record No. 586 was taken, I was in the house but away from my desk. I would have voted yes.

Davis

HB 2027 - STATEMENT OF LEGISLATIVE INTENT

May this serve to inform that I have accepted the language added by Representative Davila in the conference committee report which relates to the regulation of tanning facilities. It is my opinion that the amendment that was added by Representative Davila had the potential of making this legislation a prime candidate for a challenge in District Court.

To assist me in making this determination, I have sought the legal opinion of constitutional law professors and attorneys who practice constitutional law and they, too, are of the same opinion.

Though I am agreeing to place the language back into the text of the bill, I feel Ms. Davila's language in the bill will give tanning facilities legal recourse to sue on the violation of their First Amendment rights, providing them with the opportunity to obtain a temporary restraining order and continue to operate without any enhanced regulation or stricter law enforcement monitoring of which the original bill provided. I have taken steps necessary to ensure that should any portion of this legislation be found unconstitutional that only that part would be affected.

I have been a strong proponent of stricter regulations on the "sexually oriented tanning facilities" and would like to see them shut down today. However, my cautious approach was to avoid any legal ramifications, establish stricter regulations, and obtain passage of this legislation to protect the health, safety, and welfare of the public.

Yarbrough

HJR 80 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Black submitted the following conference committee report on **HJR 80**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney

Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HJR 80** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister

Black

Bivins

Kamel

Brown

Chisum

Sims

Craddick

Montford

On the part of the Senate

On the part of the House

HJR 80, A joint resolution proposing a constitutional amendment to abolish the office of constable in Mills, Reagan, and Roberts counties.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 18, Article V, Texas Constitution, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) Each county in the State with a population of 30,000 or more, according to the most recent federal census, from time to time, for the convenience of the people, shall be divided into not less than four and not more than eight precincts. Each county in the State with a population of 18,000 or more but less than 30,000, according to the most recent federal census, from time to time, for the convenience of the people, shall be divided into not less than two and not more than five precincts. Each county in the State with a population of less than 18,000, according to the most recent federal census, from time to time, for the convenience of the people, shall be designated as a single precinct or, if the Commissioners Court determines that the county needs more than one precinct, shall be divided into not more than four precincts. Notwithstanding the population requirements of this subsection, Chambers County, from time to time, for the convenience of the people, shall be divided into not less than two and not more than six precincts. A division or designation under this subsection shall be made by the Commissioners Court provided for by this Constitution. Except as provided by Subsection (e) of this section, in [H] each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years and until his successor shall be elected and qualified; provided that in a county with a population of less than 150,000, according to the most recent federal census, in any precinct in which there may be a city of 18,000 or more inhabitants, there shall be elected two Justices of the Peace, and in a county with a population of 150,000 or more, according to the most recent federal census, each precinct may contain more than one Justice of the Peace Court.

(e) The office of Constable in Mills County is abolished. The powers, duties, and records of the office are transferred to the County Sheriff.

(f) The office of Constable in Reagan County and the office of Constable in Roberts County are abolished. The functions of the office are transferred to the County Sheriff. However, the office of Constable is abolished under this

subsection only if, at the statewide election at which the constitutional amendment providing for the abolition is submitted to the voters, a majority of the voters of Reagan County or Roberts County, as applicable, voting on the question at that election favor the amendment.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. The abolition of the office of constable in Mills County under the constitutional amendment proposed by the 74th Legislature, Regular Session, 1995, providing for the abolition of the office in that county takes effect January 1, 1996. This provision expires January 2, 1996.

SECTION 3. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. The abolition of the office of constable in Reagan County and in Roberts County under the constitutional amendment proposed by the 74th Legislature, Regular Session, 1995, providing for the abolition of that office in those counties, takes effect January 1, 1996, if the conditions of Subsection (f), Section 18, Article V, as added by that constitutional amendment, are met. This temporary provision expires January 2, 1996.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 7, 1995. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for the abolition of the office of constable in Mills, Reagan, and Roberts counties."

Representative Black moved to adopt the conference committee report on **HJR 80**.

A record vote was requested.

The motion prevailed by (Record 587): 142 Yeas, 1 Nay, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Nay — Lewis, R.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Carona; Hudson; Marchant; Price; Stiles.

HR 1219 - ADOPTED

The speaker laid before the house the following privileged resolution:

By Junell,

HR 1219

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences in Senate Bill No. 374 to consider and take action on the following specific matters:

(1) House Rule 13, Section 9(a)(4) is suspended to permit the committee to amend Section 18.01(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), to read as follows:

(a) The Texas Racing Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, and except as provided by Subsections (b) and (c) of this section, the commission is abolished and this Act expires September 1, 1997 [1995].

Explanation: This action is necessary to continue the Texas Racing Commission for a two-year period and require a sunset review again in the upcoming biennium.

(2) House Rule 13, Section 9(a)(4) is suspended to permit the committee to amend the effective date provision of the bill to read as follows:

SECTION 3.01. (a) Except as provided by Subsection (b), this Act takes effect September 1, 1995.

(b) Section 1.05 of this Act takes effect only if the 74th Legislature, Regular Session, 1995, does not enact other legislation that becomes law and would amend Section 18.01(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), to extend the sunset date of the Texas Racing Commission.

Explanation: This will allow the Texas Racing Commission to be continued for two years if it is not continued by passage of sunset legislation under consideration.

The resolution was adopted without objection.

SB 374 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Junell submitted the conference committee report on **SB 374**.

Representative Junell moved to adopt the conference committee report on **SB 374**.

The motion prevailed.

SB 1445 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Siebert submitted the conference committee report on **SB 1445**.

Representative Siebert moved to adopt the conference committee report on **SB 1445**.

The motion prevailed.

MESSAGE FROM THE SENATE

Austin, Texas, May 28, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HB 283 by Cuellar, Henry (Sponsor-Zaffirini), relating to environmental protection of the Rio Grande (committee substitute).

HB 467 by Kuempel (Sponsor-Ratliff), relating to taxation of fuel used in the repair of rolling stock.

HB 1031 by Oliveira (Sponsor-Sibley), relating to the collection of certain unpaid wages.

HB 1086 by Brimer and Yarbrough (Sponsor-Brown), relating to disqualification for the receipt of unemployment compensation benefits based on the receipt of certain periodic payments.

HB 1620 by Junell (Sponsor-Montford), relating to licensing fees of veterinarians.

HB 1728 by Grusendorf (Sponsor-Montford), relating to negotiable instruments and bank deposits and collections, including a revision of Chapter 3 of the Uniform Commercial Code.

HB 1876 by Stiles (Sponsor-Lucio), relating to the regulation and control of sanitary sewer overflows.

HB 2133 by Combs, et al. (Sponsor-Bivins), relating to the authority of certain Parks and Wildlife Department employees to enter on private property and to the use of information obtained.

HB 2614 by Oakley (Sponsor-Luna, Gregory), relating to the jurisdiction of peace officers.

SCR 177 by Wentworth, instructing the enrolling clerk of the Senate to correct SB 1365.

HCR 238 by Cuellar, Henry, instructing the house enrolling clerk to make technical corrections to HB 1001.

HB 1924 by Maxey (Sponsor-Barrientos), relating to the state mileage guide adopted by the comptroller.

HB 2696 by Rodriguez (Sponsor-Madla), relating to the ability of a municipality to participate in a federal program for which local matching funds are required.

Respectfully,
Betty King
Secretary of the Senate

SB 1502 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Harris submitted the conference committee report on **SB 1502**.

Representative Harris moved to adopt the conference committee report on **SB 1502**.

The motion prevailed.

HB 546 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Brimer submitted the following conference committee report on **HB 546**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 546** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris	Brimer
Lucio	Corte
Moncrief	Crabb
Madla	King
	Yost

On the part of the Senate	On the part of the House
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HB 546, A bill to be entitled An Act relating to the exclusion of unserved property from certain water conservation and reclamation districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 50, Water Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. EXCLUSION OF CERTAIN UNSERVED PROPERTY

Sec. 50.501. APPLICABILITY. This subchapter applies only to a district that:

(1) provides potable or treated water supply services or wastewater services;

(2) imposes a tax on property in the district at a rate that does not exceed \$1.20 per \$100 assessed valuation; and

(3) does not impose a standby fee, as defined by Section 50.056.

Sec. 50.502. PETITION FOR EXCLUSION OF UNSERVED PROPERTY.
(a) The owner of property in a district on which the district has imposed a tax but to which the district does not provide services may petition the board to exclude the property from the district if:

(1) the owner or the owner's predecessor in interest has requested the district to provide services to the property and the district has declined to provide services;

(2) all taxes the district has levied and assessed against the property and all fees and assessments the district has imposed against the property or the owner that are due and payable on or before the date of the petition are fully paid; and

(3) the property is located in an area:

(A) separated from the remainder of the district by a United States highway or interstate highway constructed by the Texas Department of Transportation or a predecessor of the department and the highway causes the provision of service by the district to be financially unfeasible; or

(B) for which the commission or a predecessor of the commission has issued a certificate of convenience and necessity under Subchapter G, Chapter 13, Water Code, and service is being provided under that certificate.

(b) The owner must send the petition to the district's main office by certified mail.

Sec. 50.503. CONTENT OF PETITION. The petition for exclusion must:

(1) state that the property owner desires the district's services and that the district has declined to provide the services to the property;

(2) accurately describe real property to be excluded by its metes and bounds or by lot and block if there is a recorded map or plat and survey of the property;

(3) describe for identification other property to be excluded; and

(4) include any other information the district requires.

Sec. 50.504. ACTION ON PETITION; ENFORCEMENT. (a) The board shall consider a petition for exclusion of property as an application for services. Not later than the 35th day after the date of receipt of the petition the board shall decide whether to provide the services to the petitioner's property or grant the petition for exclusion.

(b) If the board decides not to provide the services, not later than the 35th day after the date of receipt of the petition the board shall grant the petition for exclusion and issue an order excluding the property. The order takes effect immediately. An order to exclude property must:

(1) identify the property that is the subject of the petition;

(2) redefine the boundaries of the district; and

(3) exclude the identified property.

(c) The board shall file for record a certified copy of the order in the real property records of the county where the property is located.

(d) If the board decides to provide the services in lieu of excluding the property, not later than the 35th day after the date of the decision, the board shall prepare and present to the petitioner a plan and schedule for providing service to the property, and the district shall begin operations to carry out the plan not later than the 90th day after the date the plan is presented.

(e) The petitioner may petition the commission to order the board to exclude the property or carry out the plan for providing service to the property if the board fails to meet a deadline provided by Subsection (a), (b), or (d).

The petition must be filed on or before the 30th day after the date of the deadline that was not met.

(f) The petitioner may appeal the board's decision to provide service to the property by filing a petition with the commission requesting that the commission order the board to exclude the property from the district. The petition must be filed on or before the 30th day after the date the board provides the plan for providing service to the property. The board may suspend its preparations or operations to carry out the plan pending hearing on the appeal.

(g) On receipt of a petition under Subsection (e) or (f), the commission shall order a hearing on the petition to be held not later than the 60th day after the date of its receipt of the petition. The commission shall give notice of the hearing as provided by commission rule to all persons who may be affected by the outcome of the hearing. The commission by rule may require a petitioner to include with the petition a deposit in an amount estimated to be sufficient to pay the costs of the notice.

(h) If the commission finds at a hearing on a petition filed under Subsection (e) that the board has failed without good cause to provide the petitioner with a plan for providing services or fails to go forward in good faith with the implementation of the plan adopted by the board, the commission shall order the board to exclude the property.

(i) If the commission finds at a hearing on a petition filed under Subsection (f) that the plan for providing services to the property is unreasonable or impracticable, the commission shall order the board to exclude the property from the district.

(j) A property owner who has filed a petition for exclusion under this subchapter may bring suit in district court to order the board to provide services or issue an order of exclusion in accordance with the periods provided by this section if it appears that the board is not complying with this section. Review by the court is by trial de novo.

Sec. 50.505. EFFECT OF ORDER. (a) An order of exclusion issued under this subchapter removes the identified property from the jurisdiction of the district. The exclusion of the property does not diminish or impair the rights of holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(b) Property excluded under this subchapter is not released from the payment of its pro rata share of the district's debt existing on the date of the order of exclusion. The district shall continue to levy taxes each year on the excluded property equal to the property's share of the debt and the taxes collected shall be applied exclusively to the payment of that debt. The owner of the excluded property may at any time pay the debt in full without penalty.

(c) The excluded property is not subject to any debt of the district incurred after the date of the exclusion order.

Sec. 50.506. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2002.

SECTION 2. This Act takes effect September 1, 1995.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Brimer moved to adopt the conference committee report on **HB 546**.

The motion prevailed.

HB 1770 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative R. Lewis submitted the following conference committee report on **HB 1770**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1770** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis
Bivins
Rosson
Gallegos

R. Lewis
Hamric
Kamel
Munoz
Wohlgemuth

On the part of the Senate

On the part of the House

HB 1770, A bill to be entitled An Act relating to the ability of voters in certain counties to petition a commissioners court to increase the salary of members of the county sheriff's department.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 152.072(a), Local Government Code, is amended to read as follows:

(a) The qualified voters of a county with a population of more than 30,000 ~~[75,000]~~ may petition the commissioners court of the county to increase the minimum salary of each member of the sheriff's department.

SECTION 2. Section 152.073(a), Local Government Code, is amended to read as follows:

(a) A person who is a county official ~~[in a county with a population of more than 75,000]~~ and who is in charge of the sheriff's department or is responsible for setting the compensation provided by Sections 152.071 and 152.072 commits an offense if the person violates Section 152.071 or 152.072.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative R. Lewis moved to adopt the conference committee report on **HB 1770**.

The motion prevailed. (Telford recorded voting no)

HB 1826 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Jackson submitted the following conference committee report on **HB 1826**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1826** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Brown

Jackson

Truan

Culberson

Bivins

Johnson

Ratliff

King

Haywood

Corte

On the part of the Senate

On the part of the House

HB 1826, A bill to be entitled An Act relating to the approval of disposal system plans by the Texas Natural Resource Conservation Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.034, Water Code, is amended to read as follows:

Sec. 26.034. APPROVAL OF DISPOSAL SYSTEM PLANS. (a) The commission may, on a case-by-case basis, [shall] review and approve plans and specifications for [aH] treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes.

(b) Before beginning construction, every person who proposes to construct or materially alter the efficiency of any treatment works to which this section applies shall submit completed plans and specifications to the commission [~~for review and approval~~].

(c) The commission by rule shall adopt standards to determine which plans and specifications the commission will review for approval. If the commission excludes certain plans and specifications from review and approval, the commission shall require that a registered professional engineer submit the plans to the commission and make a finding that the plans and specifications are in substantial compliance with commission standards and that any deviation from those standards is based on the best professional judgment of the registered professional engineer.

(d) Except as provided by Subsection (e), the commission may not require plans and specifications for a sewer system that transports primarily domestic waste to be submitted to the commission from:

(1) a municipality if:

(A) the municipality has its own internal engineering review staff;

(B) the plans and specifications subject to review are prepared by private engineering consultants; and

(C) the review is conducted by a registered professional engineer who is an employee of or consultant to the municipality separate from the private engineering consultant charged with the design of the plans and specifications under review; or

(2) an entity that is required by local ordinance to submit the plans and specifications for review and approval to a municipality.

(e) If the commission finds that a municipality's review and approval process does not provide for substantial compliance with commission standards, the commission shall require all plans and specifications reviewed by the municipality under Subsection (d) to be submitted to the commission for review and approval [The commission shall approve the plans and specifications if they conform to the waste discharge requirements and water quality standards established by the commission].

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Jackson moved to adopt the conference committee report on **HB 1826**.

The motion prevailed.

HB 2256 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Shields submitted the following conference committee report on **HB 2256**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2256** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Madla

Ellis

Moncrief

Zaffirini

On the part of the Senate

Shields

Counts

Smithee

Duncan

On the part of the House

HB 2256, A bill to be entitled An Act relating to viatical settlements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 3.50-6A, Insurance Code, is amended to read as follows:

Art. 3.50-6A. VIATICAL SETTLEMENTS

Sec. 1. DEFINITIONS. In this article:

(1) "Person" means an individual, corporation, trust, partnership, association, or any other legal entity.

(2) "Viatical [~~;~~ "viatical"] settlement" means an agreement that is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state under which a person pays compensation or anything of value that is less than the expected death benefit of a policy insuring the life of an individual who has a catastrophic or life-threatening illness or condition in return for the policy owner's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit under or ownership of the policy [a contract, entered into by an insured with a terminal illness who owns a life insurance policy insuring the life of the insured, under which the insured assigns or transfers the insurance policy to another person or entity for valuable consideration].

Sec. 2. RULES. (a) The purpose of this article is to register persons engaged in the business of viatical settlements and to provide consumer protection for a person with a catastrophic or life-threatening illness or condition who may sell or otherwise transfer the person's life insurance policy.

(b) The commissioner shall adopt reasonable rules to implement this article.

(c) The rules adopted by the commissioner under this article must include rules governing:

(1) registration of a person engaged in the business of viatical settlements;

(2) approval of contract forms;

(3) disclosure requirements;

(4) prohibited practices relating to:

(A) discrimination in the provision of viatical settlements; and

(B) referral fees paid by persons engaged in the business of viatical settlements;

(5) the assignment or resale of life insurance policies; and

(6) the maintenance of appropriate confidentiality of personal and medical information.

(d) The commissioner may adopt rules requiring payment of an annual fee in connection with registration. The fee may not exceed \$250.

Sec. 3. ENFORCEMENT. For a violation of a rule adopted under this article, the commissioner may take any action against a person engaged in the business of viatical settlements that may be taken under:

(1) Articles 1.10 and 1.10E of this code;

(2) Article 1.10D of this code against a person engaged in a fraudulent insurance act; or

Sec. 4. RELATION TO OTHER INSURANCE LAWS.

Except as otherwise provided by this article or by rules adopted under this article, this code and any other insurance law of this state do not apply to the business of viatical settlements [REGULATION BY BOARD. The board has exclusive jurisdiction in this state to regulate viatical settlements, regardless of form, other than transactions governed by The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes)].

SECTION 2. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1995.

(b) Section 3, Article 3.50-6A, Insurance Code, as added by this Act, takes effect January 1, 1996.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Shields moved to adopt the conference committee report on **HB 2256**.

The motion prevailed. (Heflin recorded voting no)

HB 2754 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pitts submitted the following conference committee report on **HB 2754**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2754** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister
Whitmire
Wentworth
Lucio
Bivins

Pitts
Alexander
Bosse

On the part of the Senate

On the part of the House

HB 2754, A bill to be entitled An Act relating to the definition of portable building unit.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 6701a-2, Revised Statutes, is amended by adding Section H to read as follows:

H. "Portable building unit" as used in this article means the pre-fabricated structural and other components incorporated and delivered by the manufacturer

as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled or kit (unassembled) configuration when loaded for transport.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Pitts moved to adopt the conference committee report on **HB 2754**.

The motion prevailed.

HB 2758 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Saunders submitted the following conference committee report on **HB 2758**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2758** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis	Saunders
Wentworth	Yost
Rosson	B. Turner
Gallegos	Mowery
Galloway	

On the part of the Senate	On the part of the House
---------------------------	--------------------------

HB 2758, A bill to be entitled An Act relating to the provision of municipal services in an annexed area.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 43.056(e) and (i), Local Government Code, are amended to read as follows:

(e) A service plan may not:

(1) require the creation of another political subdivision;
(2) require a landowner in the area to fund the capital improvements necessary to provide municipal services in a manner inconsistent with Chapter 395 unless otherwise agreed to by the landowner; or

(3) provide fewer services or lower levels of services in the area;
(A) than were in existence in the area immediately preceding the date of the annexation; or

(B) than ~~[that]~~ are otherwise available in other parts of the municipality with land uses and population densities similar to those reasonably contemplated or projected in the area.

(i) A service plan is valid for 10 years. Renewal of the service plan is at the discretion of the municipality. A person residing in an annexed area may enforce a service plan by applying for a writ of mandamus. If a court issues the writ, the municipality shall pay the person's costs and reasonable attorney's fees in bringing the action. A writ issued under this subsection must provide the municipality the option of disannexing the area within 30 days.

SECTION 2. Subchapter C, Chapter 43, Local Government Code, is amended by adding Section 43.0561 to read as follows:

Sec. 43.0561. RELEASE OF EXTRATERRITORIAL JURISDICTION BY GENERAL LAW MUNICIPALITY OVER CERTAIN TRACTS OF LAND.

(a) This section applies only to a tract of property that is:

(1) 40 or more acres in size;

(2) located entirely in a county with a population of more than 260,000; and

(3) located in the extraterritorial jurisdiction of a general law municipality with a population of more than 1,000 but less than 2,500 that provides water but not sewer services.

(b) The owner of a tract of land to which this section applies that is adjacent to the corporate limits of another municipality may petition the governing body of that other municipality for annexation. On receipt of a petition, the municipality may annex the area if the municipality agrees to a service plan that provides both water and sewer services to the tract not later than 3-1/2 years after the date of the annexation. On annexation, the area is released from the extraterritorial jurisdiction of the municipality described by Subsection (a)(3) and becomes a part of the municipality agreeing to provide water and sewer services.

(c) This section expires March 31, 1996, unless there is litigation pending at that time involving the validity of the annexation of a tract of land to which this section applies. If litigation is pending, this section remains in effect until a court enters a final judgment in the case.

SECTION 3. The change in law made by Section 1 of this Act applies only to annexations that are initiated on or after the effective date of this Act. The former law is continued in effect for annexations that were initiated prior to the effective date of this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Saunders moved to adopt the conference committee report on **HB 2758**.

A record vote was requested.

The motion prevailed by (Record 588): 145 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman;

Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Hudson; Marchant; Price.

HB 3101 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pitts submitted the following conference committee report on **HB 3101**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3101** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lucio	Pitts
Madla	Brady
Moncrief	Romo
Nixon	Staples

Brown

On the part of the Senate

On the part of the House

HB 3101, A bill to be entitled An Act relating to application of usury laws to certain purchases of accounts receivable.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Title 79, Revised Statutes (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 1.14 to read as follows:

Art. 1.14. PURCHASES OF ACCOUNTS RECEIVABLE. (a) In this article, "account purchase transaction" means an agreement or agreements under which a person or entity engaged in a commercial enterprise sells accounts, instruments, documents, and/or chattel paper subject to this chapter at a discount, whether or not the person or entity has a related repurchase obligation.

(b) For the purposes of this chapter, the amount of any discount in, or charged under, an account purchase transaction is not compensation contracted for, charged, or received with respect to that account purchase transaction.

(c) For the purposes of this chapter, the parties' characterization of an account purchase transaction as a purchase shall be conclusive that the account purchase transaction is not a transaction for the use, forbearance, or detention of money.

SECTION 2. This Act applies to an account purchase transaction entered before, on, or after the effective date of this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Pitts moved to adopt the conference committee report on **HB 3101**.

The motion prevailed.

SB 345 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Uher submitted the conference committee report on **SB 345**.

SB 345 - STATEMENT OF LEGISLATIVE INTENT

Representative Kubiak: Mr. Uher, for intent purposes and so that we have it in the record, I ask you a question on this measure before the house. On page 3, subsection b, lines 15 through 19, and for intent purposes, I want to make sure that I understand—that if a business' taxable appraised value increases by at least 4 million dollars from the current tax role to the '96 tax roll, is it your understanding that the business would be in compliance with this subsection?

Representative Uher: That is correct.

Kubiak: I appreciate that. Thank you.

SB 345 - (consideration continued)

Representative Uher moved to adopt the conference committee report on **SB 345**.

The motion prevailed. (Horn recorded voting no; Greenberg, yes)

SB 699 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Patterson submitted the conference committee report on **SB 699**.

Representative Patterson moved to adopt the conference committee report on **SB 699**.

The motion prevailed.

SB 964 - MOTION TO ADOPT CONFERENCE COMMITTEE REPORT

Representative Bailey submitted the conference committee report on **SB 964**.

Representative Bailey moved to adopt the conference committee report on **SB 964**.

A record vote was requested.

The motion was lost by (Record 589): 26 Yeas, 113 Nays, 1 Present, not voting.

Yeas — Alonzo; Alvarado; Bailey; Brimer; Cuellar, H.; Cuellar, R.; Danburg; De La Garza; Dukes; Ehrhardt; Goodman; Grusendorf; Hernandez; Hirschi; Horn; Kamel; King; Longoria; Luna; McDonald; Rodriguez; Serna; Solis; Thompson; Yarbrough; Yost.

Nays — Alexander; Allen; Averitt; Berlanga; Black; Bosse; Brady; Carter; Chisum; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Culberson; Davila; Davis; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goolsby; Gray; Greenberg; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Hochberg; Holzheuser; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Krusee; Kubiak; Kuempel; Lewis, R.; Madden; Marchant; Maxey; McCall; McCoulskey; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Romo; Rusling; Sadler; Saunders; Seidlits; Shields; Siebert; Smithee; Solomons; Staples; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Zbraneck.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Carona; Clemons; Coleman; Hightower; Hudson; Lewis, G.; Place; Price; Stiles.

SB 1128 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative H. Cuellar submitted the conference committee report on **SB 1128**.

Representative H. Cuellar moved to adopt the conference committee report on **SB 1128**.

A record vote was requested.

The motion prevailed by (Record 590): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver;

Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost.

Present, not voting — Mr. Speaker(C); Puente.

Absent, Excused — Wilson.

Absent — Carona; Hudson; Luna; Munoz; Price; Zbranek.

STATEMENT OF VOTE

When Record No. 590 was taken, the machine failed to register my vote. I would have voted yes.

Luna

HB 2569 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Brady submitted the following conference committee report on **HB 2569**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2569** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris
Madla
Sibley
Shapiro
Brown

On the part of the Senate

Brady
Goodman
Van de Putte
H. Cuellar
Harris

On the part of the House

HB 2569, A bill to be entitled An Act relating to the investigation of child abuse and the protection of the interests of a child who is the subject of a child abuse investigation or a suit affecting the parent-child relationship or who is under the jurisdiction of the Department of Protective and Regulatory Services; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 262, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 262.111 to read as follows:

Sec. 262.111. EXPEDITED HEARING AND APPEAL. (a) The Department of Protective and Regulatory Services is entitled to an expedited hearing under this chapter in any proceeding in which a hearing is required if the department determines that a child should be removed from the child's home because of an immediate danger to the physical health or safety of the child.

(b) In any proceeding in which an expedited hearing is held under Subsection (a), the department, parent, guardian, or other party to the proceeding is entitled to an expedited appeal on a ruling by a court that the child may not be removed from the child's home.

(c) If a child is returned to the child's home after a removal in which the department was entitled to an expedited hearing under this section and the child is the subject of a subsequent allegation of abuse or neglect, the department or any other interested party is entitled to an expedited hearing on the removal of the child from the child's home in the manner provided by Subsection (a) and to an expedited appeal in the manner provided by Subsection (b).

SECTION 2. Section 261.301, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsections (f) and (g) to read as follows:

(f) An investigation of a report to the department of serious physical or sexual abuse of a child shall be conducted jointly by an investigator from the appropriate local law enforcement agency and the department or agency responsible for conducting an investigation under Subchapter E.

(g) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under Subsection (f) does not constitute grounds to prevent or prohibit the department from performing its duties under this subtitle. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Subsection (f).

SECTION 3. Subchapter D, Chapter 261, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 261.312 to read as follows:

Sec. 261.312. REVIEW TEAMS; OFFENSE. (a) The department shall establish review teams to evaluate department casework and decision-making related to investigations by the department of child abuse or neglect. The department may create one or more review teams for each region of the department for child protective services. A review team is a citizen review panel or a similar entity for the purposes of federal law relating to a state's child protection standards.

(b) A review team consists of five members who serve staggered two-year terms. Review team members are appointed by the director of the department and consist of community representatives and private citizens who live in the region for which the team is established. Each member must be a parent who has not been convicted of or indicted for an offense involving child abuse or

neglect, has not been determined by the department to have engaged in child abuse or neglect, or is not under investigation by the department for child abuse or neglect. A member of a review team is a department volunteer for the purposes of Section 411.114, Government Code.

(c) A review team conducting a review of an investigation may conduct the review by examining the facts of the case as outlined by the department caseworker and law enforcement personnel. In providing information to a review team, the department may not disclose the identity of a person who reports abuse or neglect or of another individual involved in the investigation. Information regarding the identity of a person who reports abuse or neglect and of any other individual involved in the investigation of a report is confidential.

(d) A review team shall report to the department the results of the team's review of an investigation. The review team's report may not include confidential information. The findings contained in a review team's report are subject to disclosure under Chapter 552, Government Code. This section does not require a law enforcement agency to divulge information to a review team that the agency believes would compromise an ongoing criminal case, investigation, or proceeding.

(e) A member of a review team commits an offense if the member discloses confidential information. An offense under this subsection is a Class C misdemeanor.

SECTION 4. Subchapter B, Chapter 262, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 262.1015 to read as follows:

Sec. 262.1015. REMOVAL OF ALLEGED PERPETRATOR; OFFENSE.

(a) If the department determines after an investigation that child abuse has occurred and that the child would be protected in the child's home by the removal of the alleged perpetrator of the abuse, the department shall file a petition for the removal of the alleged perpetrator from the residence of the child rather than attempt to remove the child from the residence.

(b) A court may issue a temporary restraining order in a suit by the department for the removal of an alleged perpetrator under Subsection (a) if the department's petition states facts sufficient to satisfy the court that:

(1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse;

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing;

(3) the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the residence of the child; and

(4) the issuance of the order is in the best interest of the child.

(c) The notice requirements under Section 262.109 apply to a proceeding under this section. The order shall be served on the alleged perpetrator and on the parent or other adult with whom the child will continue to reside.

(d) A temporary restraining order under this section expires not later than the 10th day after the date the order was rendered. The requirements of an adversary hearing for the removal of a child from the child's home under Subchapter C apply to the removal of an alleged perpetrator under this section.

(e) A temporary restraining order under this section and any other order

requiring the removal of an alleged perpetrator from the residence of a child shall require that the parent or other adult with whom the child will continue to reside in the child's home make a reasonable effort to monitor the residence and report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence.

(f) A person commits an offense if the person is a parent or other person with whom a child resides, the person is served with an order containing the requirement specified by Subsection (e), and the person fails to make a reasonable effort to monitor the residence of the child or to report to the department and the appropriate law enforcement agency an attempt by the alleged perpetrator to return to the residence. An offense under this section is a Class A misdemeanor.

(g) A person commits an offense if, in violation of a court order under this section, the person returns to the residence of the child the person is alleged to have abused. An offense under this subsection is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this subsection.

SECTION 5. Subchapter A, Chapter 263, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 263.005 to read as follows:

Sec. 263.005. ENFORCEMENT OF FAMILY SERVICE PLAN. The department shall designate existing department personnel to ensure that the parties to a family service plan comply with the plan.

SECTION 6. Subchapter A, Chapter 264, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 264.010 to read as follows:

Sec. 264.010. CHILD ABUSE PLAN; LIMITATION ON EXPENDITURE OF FUNDS. (a) Funds appropriated for protective services, child and family services, and the purchased service system for the department may only be spent on or after March 1, 1996, in a county that provides the department with a child abuse prevention and protection plan. If a plan is not submitted to the department under this section, the department shall document the county's failure to submit a plan and may spend appropriated funds in the county to carry out the department's duties under this subtitle.

(b) A child abuse prevention and protection plan may be submitted by the governing body of a county or of a regional council of governments in which the county is an active participant.

(c) The department may not require a child abuse prevention and protection plan to exceed five double-spaced letter-size pages. The county or council of governments may voluntarily provide a longer plan.

(d) A child abuse prevention and protection plan must:

(1) specify the manner of communication between entities who are parties to the plan, including the department, the Texas Department of Human Services, local law enforcement agencies, the county and district attorneys, members of the medical and social service community, foster parents, and child advocacy groups; and

(2) provide other information concerning the prevention and investigation of child abuse in the area for which the plan is adopted.

SECTION 7. Subchapter D, Chapter 261, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 261.314 to read as follows:

Sec. 261.314. TESTING. (a) The department shall provide testing as necessary for the welfare of a child who the department believes, after an investigation under this chapter, has been sexually abused, including human immunodeficiency virus (HIV) testing of a child who was abused in a manner by which HIV may be transmitted.

(b) Except as provided by Subsection (c), the results of a test under this section are confidential.

(c) If requested, the department shall report the results of a test under this section to:

(1) a court having jurisdiction of a proceeding involving the child or a proceeding involving a person suspected of abusing the child;

(2) a person responsible for the care and custody of the child as a foster parent; and

(3) a person seeking to adopt the child.

SECTION 8. Subchapter B, Chapter 264, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 264.109 to read as follows:

Sec. 264.109. ADOPTIVE PARENT REGISTRY. (a) The department shall establish a registry of persons who are willing to accept foster care placement of a child in the care of the department. The child may be placed temporarily with a person registered under this section pending termination of the parent-child relationship.

(b) A person registered under this section must satisfy requirements adopted by rule by the department.

(c) The department shall maintain a list of persons registered under this section and shall make a reasonable effort to place a child with the first available qualified person on the list if a qualified extended family member is not available for the child.

(d) Before a child may be placed with a person under this section, the person must sign a written statement in which the person agrees to the immediate removal of the child by the department under circumstances determined by the department.

(e) A person registered under this section is not entitled to compensation during the time the child is placed in the person's home but may receive support services provided for the child by the department.

(f) A person registered under this section has the right to be considered first for the adoption of a child placed in the person's home if the parent-child relationship is terminated with regard to the child.

(g) The department may refuse to place a child with a person registered under this section only for a reason permitted under criteria adopted by department rule.

(h) The department shall make the public aware of the existence and benefits of the adoptive parent registry through appropriate existing department communication methods.

SECTION 9. Subchapter C, Chapter 264, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 264.205 to read as follows:

Sec. 264.205. SWIFT ADOPTION TEAMS. (a) The department shall develop swift adoption teams to expedite the process of placing a child under the jurisdiction of the department for adoption.

(b) A swift adoption team shall consist of department personnel who shall operate under policies adopted by rule by the department. The department shall set priorities for the allocation of department resources to enable a swift adoption team to operate successfully under the policies adopted under this subsection.

(c) The department shall, using a system of measurement developed by the department, report to the legislature on the success of swift adoption teams in expediting the administrative procedures and the length of time in placing children for adoption. The report shall include recommendations by the department concerning legislation that would enable the department to further improve adoption placements. The department shall report under this section on or before December 1 of each even-numbered year.

SECTION 10. Section 107.002, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Subsection (e) to read as follows:

(e) A court is not required under this section to appoint an attorney ad litem in a proceeding in which:

(1) a suit for the dissolution of a marriage is uncontested; or

(2) the issues of possession of and access to a child are agreed to by both parents.

SECTION 11. Chapter 107, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Section 107.006 to read as follows:

Sec. 107.006. GUARDIAN AD LITEM AND ATTORNEY AD LITEM POOL; QUALIFICATIONS. (a) The local administrative district judge in each county in a Department of Protective and Regulatory Services region for child protective services that contains a county having a population of 2.8 million or more shall establish a pool from which guardians ad litem and attorneys ad litem are appointed for proceedings in the district courts of the county. A local administrative district judge in any other county may establish a pool from which guardians ad litem and attorneys ad litem are appointed for proceedings in the district courts of that county. To be eligible for a pool established under this subsection, a person must:

(1) complete training provided by the State Bar of Texas in family law and the responsibilities of ad litem;

(2) complete as part of the person's annual continuing legal education requirement not fewer than three hours in family law issues; and

(3) meet other requirements established by the local administrative district judge.

(b) Before appointment as a guardian ad litem or an attorney ad litem, the person must have read, acknowledged by signing, and filed with the local administrative judge a written statement prepared by the local administrative

district judge that lists the responsibilities of an ad litem, some or all of which may be appropriate to the person's specific case. The court shall retain a copy of the acknowledgment for two years. To continue to receive appointments under this section, the person must execute a new statement at least every two years.

(c) A party to a proceeding in which a person is appointed as a guardian ad litem or an attorney ad litem may object to appointment of the person at any time before the date of the trial of the proceeding. A party may object under this subsection on the grounds that the party believes that the person appointed lacks objectivity or is failing to fulfill the person's responsibilities as an ad litem as outlined in the written statement of ad litem responsibilities. The court shall promptly rule on an objection raised under this subsection and shall order the removal of the guardian ad litem or attorney ad litem if the court finds that the objection is reasonable.

(d) A person appointed as a guardian ad litem or attorney ad litem shall complete and submit to the court a voucher or claim for payment that includes the fees charged and hours worked by the ad litem. Information submitted under this section is subject to disclosure under Chapter 552, Government Code.

(e) The Bureau of Vital Statistics may compile information submitted under Subsection (d) for a county that maintains that information on an electronic database. On the request of the bureau, the county shall provide the information. Information compiled by the bureau under this section shall be made available to the Department of Protective and Regulatory Services.

SECTION 12. Section 772.007, Government Code, is transferred to Subtitle E, Title 5, Family Code, as added by House Bill 655, Acts of the 74th Legislature, Regular Session, 1995, redesignated as Subchapter H, Chapter 264, and amended to read as follows:

SUBCHAPTER H. CHILD ABUSE PROGRAM EVALUATION

Sec. 264.701 [772.007]. ~~[GOVERNOR'S]~~ CHILD ABUSE PROGRAM EVALUATION COMMITTEE. (a) The Child Abuse Program Evaluation Committee is established within the Department of Protective and Regulatory Services ~~[office of the governor]~~.

(b) The committee is appointed by the Board of Protective and Regulatory Services ~~[governor with the advice and consent of the senate]~~ and is composed of the following 15 members:

- (1) an officer or employee of the Central Education Agency;
- (2) an officer or employee of the ~~[Texas]~~ Department of Protective and Regulatory ~~[Human]~~ Services;
- (3) an officer or employee of the Texas Juvenile Probation Commission;
- (4) an officer or employee of the Texas Department of Mental Health and Mental Retardation;
- (5) an officer or employee ~~[a member]~~ of the Children's Trust Fund of Texas Council ~~[on Child Abuse and Neglect Prevention]~~;
- (6) an officer or employee ~~[a member]~~ of the Health and Human Services Commission ~~[commission]~~;
- (7) three members of the public who have knowledge of and experience in the area of delivery of services relating to child abuse and neglect;

(8) three members of the public who have knowledge of and experience in the area of evaluation of programs relating to the prevention and treatment of child abuse and neglect; and

(9) three members of the public who are or have been recipients of services relating to the prevention or treatment of child abuse or neglect.

(c) In appointing members to the committee under Subsection (b)(9), the board shall consider appointing:

(1) an adult who as a child was a recipient of services relating to the prevention or treatment of child abuse or neglect; and

(2) a custodial and a noncustodial parent of a child who is or was a recipient of services relating to the prevention or treatment of child abuse or neglect.

(d) [(e)] A committee member appointed to represent a state agency or entity [council] serves at the pleasure of the board [governor] or until termination of the person's employment or membership with the agency or entity [council]. The public members serve staggered six-year terms, with the terms of three public members expiring on September [February] 1 of each even-numbered [odd-numbered] year.

(e) [(f)] A member of the committee serves without compensation. A public member is entitled to reimbursement for travel expenses and per diem as provided by the General Appropriations Act.

(f) [(e)] The committee shall elect from its members a presiding officer and any other officers considered necessary.

(g) [(f)] Appointments to the committee shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of an appointee.

(h) [(g)] The committee shall:

(1) develop and adopt policies and procedures governing the system each state agency uses to evaluate the effectiveness of programs to prevent or treat child abuse or neglect with which the agency contracts;

(2) develop and adopt standard definitions of "child abuse treatment" and "child abuse prevention" to be used in implementing and administering the evaluation system created under this subchapter [section];

(3) develop and adopt standard models and guidelines for prevention and treatment of child abuse to be used in implementing and administering the evaluation system created under this subchapter;

(4) develop and adopt, in cooperation with each affected state agency, a schedule for each agency's adoption and implementation of the committee's evaluation system that considers each agency's budget cycle;

(5) [(4)] develop and adopt a standard report form and a reporting schedule for the affected agencies;

(6) [(5)] develop and adopt objective criteria by which the performance of child abuse programs may be measured after reports under this subchapter [section] are submitted and evaluated; and

(7) [(6)] report annually to the Board of Protective and Regulatory Services [Governor's Interagency Council on Health and Human Services], governor, lieutenant governor, and speaker of the house of representatives on the results of the committee's evaluation process.

(i) [(h)] In adopting an evaluation system under this subchapter [section], the committee shall allow the affected agencies as much latitude as possible in:

(1) the methods used to collect the required data; and

(2) the timetable for full implementation of the system, allowing for gradual implementation of the system according to classes of program providers.

(j) [(i)] Each agency that contracts with a public or private entity for services relating to a program for the prevention or treatment of child abuse or neglect shall adopt and implement the committee's evaluation system and shall report to the committee as required by this subchapter ~~[section]~~.

SECTION 13. (a) This Act takes effect September 1, 1995, and applies to a proceeding in which an investigation of the abuse of a child is pending on or after that date.

(b) Not later than January 1, 1996, the Board of Protective and Regulatory Services shall make appointments to the Child Abuse Program Evaluation Committee that are necessary to accomplish the change in the committee's composition required by Subchapter H, Chapter 264, Family Code, as added by this Act. A public member of the committee serving on the effective date of this Act shall serve the remainder of the member's appointed term.

(c) The term of a public member of the Child Abuse Program Evaluation Committee whose term before the enactment of this Act was to expire on February 1, 1997, shall expire on September 1, 1996.

(d) The term of a public member of the Child Abuse Program Evaluation Committee whose term before the enactment of this Act was to expire on February 1, 1999, shall expire on September 1, 1998.

(e) The term of a public member of the Child Abuse Program Evaluation Committee whose term before the enactment of this Act was to expire on February 1, 2001, shall expire on September 1, 2000.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Brady moved to adopt the conference committee report on **HB 2569**.

The motion prevailed.

HB 3189 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Puente submitted the following conference committee report on **HB 3189**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3189** have met

and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister

Luna

Wentworth

Madla

Truan

On the part of the Senate

Puente

R. Lewis

Conley

Holzheuser

On the part of the House

HB 3189, A bill to be entitled An Act relating to the board of directors of the Edwards Aquifer Authority and the management of the Edwards Aquifer.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by amending Section 1.09 and by adding Sections 1.091, 1.092, and 1.093 to read as follows:

Sec. 1.09. BOARD OF DIRECTORS; ELECTIONS; TERMS. (a) The authority is governed by a board of directors composed of 15 directors elected from the single-member election districts described by Section 1.093 of this article and two directors appointed as provided by Section 1.091 of this article. The elected directors serve staggered four-year terms with as near as possible to one-half of the members' terms expiring December 1 of each even-numbered year.

(b) The board shall order elections of the appropriate number of directors to replace directors holding elected offices whose terms are nearest expiration to be held on the uniform election date in November of each even-numbered year.

(c) If a director's position becomes vacant for any reason, the board shall appoint a qualified person to serve until the first election of directors following the appointment. If the position is not scheduled to be filled at that election, the board shall provide for a director to be elected at that election to serve in the position for the remainder of the unexpired term.

(d) Sections 41.003 and 41.008, Election Code, do not apply to an election held under this article. [board of nine directors:

[(b) The board consists of:

[(1) a member appointed by the South Central Texas Water Advisory Committee created by this Act;

[(2) three residents of Bexar County, with two residents appointed by the governing body of the city of San Antonio and one resident appointed by the Commissioners Court of Bexar County to represent cities and communities in the county other than the city of San Antonio;

[(3) one resident of Comal County or the city of New Braunfels appointed by the Commissioners Court of Comal County;

[(4) one resident of Hays County appointed by the governing body of the city of San Marcos;

[(5) one resident of Medina County appointed by the governing body of the Medina Underground Water Conservation District;

[(6) one resident of Uvalde County appointed by the governing body of the Uvalde Underground Water Conservation District; and

~~[(7) one person appointed in rotation who is from Atascosa, Medina, or Uvalde counties, with that person appointed by the governing body of the Evergreen Underground Water District, by the Medina Underground Water Conservation District, or by the Uvalde County Underground Water Conservation District, with the person appointed by the Evergreen Underground Water District serving the first term, followed by a person appointed by the Medina Underground Water Conservation District to serve the second term, followed by a person appointed by the Uvalde County Underground Water Conservation District to serve the third term, and rotating in that order of appointment for subsequent terms.~~

~~[(c) The Commissioners Court of Bexar County and the governing body of the city of San Antonio shall make appointments under Subsection (b) of this section that accurately reflect the ethnic composition of the population of Bexar County.~~

~~[(d) The initial directors of the board shall draw lots to determine their terms. Four initial directors serve terms that expire June 1, 1995. Five initial directors serve terms that expire June 1, 1997. Subsequent directors shall be appointed to serve staggered four-year terms, the appropriate number of which expire June 1 of each odd-numbered year.]~~

~~(e) At the initial meeting of the board following an election of new directors, the directors [members] shall elect a [select one member to serve as] presiding officer and other necessary officers. Officers serve terms [The presiding officer serves a term] set by rule of the board not to exceed two [four] years.~~

~~(f) An act of the board is not valid unless adopted by the affirmative vote of a majority of the directors who are entitled to vote when a quorum is present. For purposes of this subsection, eight directors who are entitled to vote constitute a quorum [members of the board].~~

~~(g) [(f)] A director [board member] receives no compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the director's [member's] duties.~~

~~(h) [(g)] An elected director [A board member] shall hold office until a successor has been elected [selected and approved] and has qualified by taking the oath of office.~~

~~[(h) If a vacancy on the board occurs, the governing body that appointed the vacating member shall appoint another person having the same qualifications required of the vacating member to serve the unexpired portion of the vacating member's term.]~~

Sec. 1.091. NONVOTING MEMBERS OF BOARD. (a) In addition to the directors provided by Section 1.09 of this article, the board includes two nonvoting directors appointed as provided by this section.

(b) One nonvoting director shall be appointed by a majority vote of the South Central Texas Water Advisory Committee from among the members of the committee.

(c) One nonvoting director shall be appointed by the Commissioners Court of Medina County or Uvalde County as provided by this subsection. A nonvoting director appointed by the Commissioners Court of Medina County must be a resident of Medina County, and a nonvoting director appointed by

the Commissioners Court of Uvalde County must be a resident of Uvalde County. The Commissioners Court of Medina County shall appoint the nonvoting director for the term beginning December 1, 1996, and the Commissioners Court of Uvalde County shall appoint the nonvoting director for the term beginning December 1, 2000. Subsequent directors shall be appointed under this subsection by the Commissioners Courts of Medina County and Uvalde County in alternation.

(d) A director appointed under this section serves a four-year term. The terms of the initial directors appointed under this section begin December 1, 1996, and expire December 1, 2000. Subsequent regular appointments under this section shall be made on or before the date of the directors election held for the even-numbered election districts described by Section 1.093 of this article. Subsequently appointed directors' terms expire December 1 following the appointment of the directors' successors. If the office of a director appointed under this section becomes vacant for any reason, the office shall be filled by appointment as provided by Subsection (b) or (c) of this section, as appropriate, for the unexpired portion of the term.

(e) A director appointed under this section is entitled to participate in and comment on any matter before the board in the same manner as a voting director, except that a director appointed under this section may not vote on any matter before the board.

(f) A director appointed under this section is not entitled to compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in performing the director's duties.

Sec. 1.092. TEMPORARY BOARD AND INITIAL ELECTION OF DIRECTORS. (a) Until a board is elected as provided by this section and takes office, the authority is governed by a temporary board that consists of:

- (1) Mr. Phil Barshop;
- (2) Mr. Ralph Zendejas;
- (3) Mr. Mike Beldon;
- (4) Ms. Rosa Maria Gonzales;
- (5) Mr. John Sanders;
- (6) Ms. Sylvia Ruiz Mendelsohn;
- (7) Mr. Joe Bernal;
- (8) Mr. Oliver R. Martin;
- (9) Mr. A. O. Gilliam;
- (10) Mr. Bruce Gilleland;
- (11) Mr. Rogelio Munoz;
- (12) Mr. Doug Miller;
- (13) Ms. Paula DiFonzo;
- (14) Mr. Mack Martinez;
- (15) Ms. Jane Houghson;

(16) one temporary director appointed by the South Central Texas Water Advisory Committee from among the members of the committee; and

(17) one temporary director appointed jointly by the Commissioners Courts of Medina County and Uvalde County who must be a resident of one of those counties.

(b) A temporary director appointed by the South Central Texas Water Advisory Committee or by the Commissioners Courts of Medina County and

Uvalde County is a nonvoting member of the temporary board. The temporary director appointed by the South Central Texas Water Advisory Committee serves until the first nonvoting director appointed under Section 1.091(b) takes office. The temporary director appointed by the Commissioners Courts of Medina County and Uvalde County serves until the first nonvoting director appointed under Section 1.091(c) of this article takes office.

(c) If a vacancy occurs in a temporary director's office, except for the two nonvoting temporary directors, the remaining directors shall appoint a person to fill the vacancy. If a vacancy occurs in the office of one of the nonvoting temporary directors, the body that made that director's appointment shall appoint a person to fill the vacancy.

(d) As soon as is practicable, the temporary board shall:

- (1) meet to elect a presiding officer and other necessary officers; and
- (2) adopt rules governing the authority and board procedures.

(e) A temporary director receives no compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the director's duties.

(f) A temporary director is not personally liable for any action the director takes within the scope of the director's office and under color of authority granted by this article.

(g) The temporary board shall order an election of directors to be held on the uniform election date in November 1996. Notwithstanding Section 1.09 of this article, the initial directors elected from odd-numbered election districts described by Section 1.093 of this article serve terms expiring December 1, 1998, and the initial directors elected from even-numbered districts described by that section serve terms expiring December 1, 2000.

(h) The temporary board has all of the authority granted to the permanent board by this article and by general law.

Sec. 1.093. SINGLE-MEMBER ELECTION DISTRICTS. (a) District 1 is composed of Bexar County tracts 1203, 1204, 1205.02, 1206, 1208, 1209.02, 1211.03, 1211.04, 1211.05, 1211.06, 1211.07, 1211.08, 1212.01, 1212.02, 1218.01, 1218.03, 1218.04, 1218.05, 1219.02, 1914.02, 1917, 1918.01, and 1918.02; and that part of Bexar County tract 1205.01 included in block groups 6, 7, 8, and blocks 104, 105, 106, 107, 310, 501, and 504; and that part of Bexar County tract 1207 included in block groups 2 and 3 and blocks 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 407, 408, 409, 410, 411, 412, 413, 414, 415, 417, 418, 419, 502, 503, 504, 505, and 506; and that part of Bexar County tract 1209.01 included in block groups 2 and 3 and blocks 102, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, and 132; and that part of Bexar County tract 1210 included in block groups 4, 5, and 6; and that part of Bexar County tract 1213 included in block groups 1 and 2; and that part of Bexar County tract 1214.01 included in blocks 102A, 102B, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113; and that part of Bexar County tract 1215.01 included in blocks 101, 102, 103, 104, 105A, 105B, 106, 108, 109, 110, 118, 119, 120, 121, 122, 123, 124, 125, 126, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, and 231; and that part of Bexar County tract 1216.03 included in

block groups 3, 4, 5, 6, and blocks 101, 102, 103A, 103B, 103C, 104, 105A, 105B, 107, 108, 109, 201B, 201C, 201E, 202, 204, 205, and 206; and that part of Bexar County tract 1217 included in blocks 101A, 101B, 101C, 101D, 111A, 111B, and 112; and that part of Bexar County tract 1218.02 included in block groups 1 and 3; and that part of Bexar County tract 1219.01 included in blocks 202, 203, 204, 205, 206A, 206B, 207A, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, and 318; and that part of Bexar County tract 1903 included in blocks 132A, 133, 134A, 134B, 134C, 134D, 135A, and 135B; and that part of Bexar County tract 1904 included in blocks 101A, 101B, 103, 104, and 105; and that part of Bexar County tract 1908 included in blocks 101, 102, 103, 105, 106, 107, 108, 110, 111, 112, 113, 118, 120, 122, 125, 127, 130, 201, 202, 204, 205, 208, 210, 211, 212, 216, 217, 218, 219, 220, 221, 225, 301, 302, 304, 305, 306, 307, 311, 313, 314, 315, 316, 317, 318, 319, 320, 321, and 334; and that part of Bexar County tract 1909 included in blocks 313, 317, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, and 329; and that part of Bexar County tract 1912 included in block groups 1, 2, 6, 7, and blocks 301, 302, 303, 304, 305, 306, 309, 310, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, and 511; and that part of Bexar County tract 1913 included in block groups 1, 4, 5, and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 215, 216, 217, 218, 219, 220, 221, 222, 236, 237, 244, 301, 302, 303, 304, 305, 306, 307, 308, and 310; and that part of Bexar County tract 1914.01 included in block group 1; and that part of Bexar County tract 1914.03 included in block groups 3 and 4.

(b) District 2 is composed of Bexar County tracts 1102, 1201.85, 1214.02, 1301, 1302, 1303, 1305, 1306, 1307.85, 1308, 1308.84, 1309, 1310, 1311, 1312, 1313, 1314, 1315.01, 1315.02, and 1316.04; and that part of Bexar County tract 1101 included in block groups 2, 3, 4, 5, 6, 7, and blocks 102, 103, 104, 105, 106, 107, 110, 111, 112, 113, 114, 118, 119, 120, 121, 122, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 142, and 144; and that part of Bexar County tract 1109 included in blocks 126, 130, 201, 202, 203, 204, 209, 210, 211, 212, 213, 214, 217, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, and 249; and that part of Bexar County tract 1110 included in block group 1 and blocks 201, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231A, 231B, 232, 233, 234, 235, 236, 237, 238, 239, 401, 406, 407, 408, 409, 410, 415, 416, and 417; and that part of Bexar County tract 1202.85 included in block groups 1, 2, 3, 4, 5, 9, and blocks 601, 602, 603, 604, 605, 606, 607, 608A, 608B, 610, 613, 614, 615, and 617; and that part of Bexar County tract 1205.01 included in block groups 2 and 4 and blocks 101, 102, 103, 108, 109, 110, 111, 301, 302, 303, 304, 305, 306, 307, 308, 309, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 502, 503, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, and 520; and that part of Bexar County tract 1214.01 included in block groups 4, 5, 6, and 7; and that part of Bexar County tract 1215.02 included in block groups 4 and 5; and that part of Bexar County tract 1215.03 included in block groups 3 and 4; and that part of Bexar County tract 1304 included in block groups 1 and 8 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214B,

701, 704B, 705, 706, and 707; and that part of Bexar County tract 1404 included in blocks 408, 409, and 411; and that part of Bexar County tract 1902 included in blocks 317 and 318; and that part of Bexar County tract 1903 included in blocks 101A, 101B, 102, 103, 104, 105, 106, 107, 108, 112, 121, 122, 123, 126, 127, 132B, and 138; and that part of Bexar County tract 1904 included in blocks 102, 106, 107, 108, 109, 110, 111, 118, 122, 201, 202, 209, 210B, 301, 309, 310, 311, and 404.

(c) District 3 is composed of Bexar County tracts 1105, 1106, 1107, 1108, 1601, 1701, 1702, 1704, 1705, 1809.01, 1809.02, 1810.01, 1811, 1901, 1905, 1906, 1907, 1910.01, 1910.02, 1911.01, and 1911.02; and that part of Bexar County tract 1101 included in blocks 101, 108, and 109; and that part of Bexar County tract 1104 included in block groups 3 and 4 and blocks 106, 202, 203, 204, and 205; and that part of Bexar County tract 1109 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 139, 140, 205, 206, 207, 208, 215, 216, 218, 219, 230A, 230B, 231, 232, 233, and 234; and that part of Bexar County tract 1110 included in block group 3 and blocks 202, 203, 204, 205, 402, 403, 404, 405, 411, 412, 413, 414, 418, 419, and 420; and that part of Bexar County tract 1202.85 included in blocks 609, 611, 612, and 616; and that part of Bexar County tract 1207 included in block groups 6, 7, 8, and blocks 101, 102, 103, 119, 401A, 401B, 402, 403, 404, 405, 406, 416, 420, 421, and 501; and that part of Bexar County tract 1209.01 included in blocks 101 and 140; and that part of Bexar County tract 1210 included in block groups 1, 2, and 3; and that part of Bexar County tract 1501 included in blocks 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 624, 625, and 626; and that part of Bexar County tract 1602 included in blocks 214, 303, and 310; and that part of Bexar County tract 1605 included in block groups 2 and 3 and blocks 117, and 118; and that part of Bexar County tract 1703 included in block groups 1, 2, 7, 8, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 311, 312, 321, 322, 323, 324, 327, 399, 405, 406, 414, 415, 505, 506, 513, 514, 605, 606, 612, 613, 614, and 615; and that part of Bexar County tract 1802 included in block groups 1, 2, 3, 4, 7, 8, and 9; and that part of Bexar County tract 1808 included in blocks 110B and 111; and that part of Bexar County tract 1812 included in blocks 401, 402, 408, 409, 410, 411, and 412; and that part of Bexar County tract 1813 included in block groups 1, 2, 3, 4, and 5; and that part of Bexar County tract 1902 included in block groups 1, 2, 4, 5, 6, 7, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 316, 319, 320, and 323; and that part of Bexar County tract 1903 included in blocks 109, 110, and 111; and that part of Bexar County tract 1904 included in blocks 203, 204, 205, 206, 207, 208, 210A, 211, 212, 213, 214, 215, 303, 304, 305, 306, 307, 308, 312, 313, 314, 401, 402, 403, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, and 417; and that part of Bexar County tract 1908 included in blocks 104, 109, 124, 126, 128, 129, 206, 207, 213, 214, 215, 222, 303, 308, 309, 310, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 335, and 336; and that part of Bexar County tract 1909 included in block groups 1, 2, 4, 5, 6, 7, 8, 9, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 314, 315, 316, and 318; and that part of Bexar County tract 1912 included in block group

4 and blocks 307, 308, 311, 312, 313, 314, 315, and 512; and that part of Bexar County tract 1913 included in blocks 211, 212, 213, 214, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 238, 239, 240, 241, 242, 243, 309, 311, 312, and 313; and that part of Bexar County tract 1914.04 included in blocks 202, 203, 204, 205, 206, 207, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, and 317.

(d) District 4 is composed of Bexar County tracts 1617, 1719.01, 1719.02, 1719.03, 1719.04, 1719.05, 1719.06, 1817.01, 1817.03, 1817.04, 1817.05, 1817.06, 1817.07, 1817.08, 1817.09, 1817.10, 1818.01, 1818.05, 1819, 1820, 1821, 1914.05, 1915.01, 1915.02, 1916, and 1918.03; and that part of Bexar County tract 1614.01 included in block 913B; and that part of Bexar County tract 1616 included in block groups 1 and 2 and blocks 304, 305, and 306; and that part of Bexar County tract 1618 included in block groups 1, 2, and 3; and that part of Bexar County tract 1720 included in block group 1 and blocks 201, 202, 203A, 203B, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292A, 292B, 293, 294, 295A, 295B, and 296; and that part of Bexar County tract 1812 included in block groups 1, 2, 3, 5, and blocks 403, 404, 405, 406, and 407; and that part of Bexar County tract 1815.02 included in block groups 5, 6, and 7; and that part of Bexar County tract 1816 included in block group 2 and blocks 101A, 101B, 101C, 102A, 102B, 103, 104A, 104B, 105A, 105B, 106, 107, 108A, 109A, 110A, 111A, 112, 113, 114, 122, 136A, 136B, 143A, 143B, 305, 306, 601, and 602; and that part of Bexar County tract 1818.02 included in block groups 2, 3, 4, 5, and blocks 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113; and that part of Bexar County tract 1818.03 included in blocks 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120A, 120B, and 301; and that part of Bexar County tract 1818.04 included in block groups 2, 3, 4, 5, 6, 7, and block 101; and that part of Bexar County tract 1914.01 included in block groups 2 and 3; and that part of Bexar County tract 1914.03 included in block groups 1 and 2; and that part of Bexar County tract 1914.04 included in block group 1 and blocks 201 and 301.

(e) District 5 is composed of Bexar County tracts 1216.01, 1317, 1416, 1418, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1606, 1607.85, 1610.85, 1611, 1612, 1613, 1614.85, 1615.01, 1615.02, 1619, and 1620; and that part of Bexar County tract 1216.03 included in blocks 106A, 106B, 201D, 201F, and 203; and that part of Bexar County tract 1216.04 included in block groups 1 and 2 and blocks 301A, 301B, 302, 303, 304, and 305; and that part of Bexar County tract 1217 included in block groups 2, 3, 4, 5, 6, and blocks 102A, 102B, 103, 104A, 104B, 105, 106, 107, 108, 109, 110A, and 110B; and that part of Bexar County tract 1218.02 included in block group 2; and that part of Bexar County tract 1219.01 included in block group 1 and blocks 201, 207B, 208, 209, 210, 319, and 320; and that part of Bexar County tract 1316.01 included in blocks 101, 102, 103A, 103B, 103C, 103D, 103E, 104A, 104B, 104C, 105A, 105B, 106, 107A, 107B, 108A, 108B, 109,

110, 113, 114, 117, 118A, 118B, 119A, 119B, 119C, 119D, 119E, 119F, 119G, 121A, 121B, 121C, 121D, 121E, 122, 124, 133, 134, 135, 136, 137, 138A, and 138B; and that part of Bexar County tract 1316.03 included in blocks 201 and 204; and that part of Bexar County tract 1318 included in block group 3 and blocks 214, 215, 216, 218, 401, 411, 412, 413, 414, 415, 416, 417, 418, 424, 425, 426, 427, 428, 429, and 430; and that part of Bexar County tract 1415 included in block 901A; and that part of Bexar County tract 1417 included in blocks 101, 102, 103, 104, 105, 106, 107, 108A, 108B, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119A, 119B, 120, 121, 122, 124, 125, 126, 132A, 132B, 133, 134, 135, 136, 139, 140, 141, 142, 143, and 199; and that part of Bexar County tract 1419 included in block group 2 and blocks 101, 102, 103A, 103B, 104, 105, 106, 107, 108, 109, 110, 111A, 111B, 112A, 112B, 301A, 301B, 302, 309A, 310, 311, 312, 314, 315, 316, 317, 318, 319, 320A, 320B, 321, 322, 323, 324, 325, 326, 327, 328, 329A, 329B, 330A, 330B, 331, 332, and 399; and that part of Bexar County tract 1605 included in block groups 6, 7, 8, and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, and 116; and that part of Bexar County tract 1609 included in block groups 3, 4, 5, and blocks 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, and 618; and that part of Bexar County tract 1614.01 included in blocks 913A, 913C, and 913D; and that part of Bexar County tract 1616 included in blocks 302, 303, 307A, 307B, and 308; and that part of Bexar County tract 1618 included in block group 4; and that part of Bexar County tract 1703 included in blocks 313, 314, 315, 316, 317, 318, 319, 401, 402, 403, 404, 407, 408, 409, 410, 411, 412, 413, 416, 417, 418, 419, 501, 502, 503, 504, 507, 508, 509, 510, 511, 512, 515, 516, 517, 518, 601, 602, 603, 604, 607, 608, 609, 610, 611, 616, and 617; and that part of Bexar County tract 1710 included in block groups 4, 5, and 6; and that part of Bexar County tract 1720 included in block 297.

(f) District 6 is composed of Bexar County tracts 1103, 1215.04, 1401, 1402, 1403, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1603, 1604, and 1608; and that part of Bexar County tract 1104 included in blocks 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 201, 206, 207, 208, 209, 210, 211, 212, 213, 214, and 215; and that part of Bexar County tract 1213 included in block groups 3, 4, and 5; and that part of Bexar County tract 1214.01 included in block groups 2 and 3 and block 101; and that part of Bexar County tract 1215.01 included in block group 3 and blocks 107, 111, 112, 113, 114, 115, 116, 117, 127, 128, 129, 130, 131, 232, 233, 234, 235, and 236; and that part of Bexar County tract 1215.02 included in block groups 1, 2, and 3; and that part of Bexar County tract 1215.03 included in block groups 1, 2, 5, 6, 7, and 8; and that part of Bexar County tract 1216.03 included in block 201A; and that part of Bexar County tract 1216.04 included in block group 4 and blocks 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, and 321; and that part of Bexar County tract 1304 included in block groups 3, 4, 5, 6, and blocks 214A, 215, 220, 221, 702, 703, 704A, 720, 726, 734, 735, 736, 737, 738, 739, and 740; and that part of Bexar County tract 1316.01 included in blocks 111, 112, 115A, 115B, 116, 120A, 120B, 120C,

123A, 123B, 125, 126, 127, 128A, 128B, 128C, 129A, 129B, 130, 131A, 131B, 131C, 131D, 132, 139, 140, 141, 142, and 143; and that part of Bexar County tract 1316.03 included in block groups 1, 3, 4, and blocks 202, 203A, 203B, 203C, 203D, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214A, 214B, 214C, 214D, 214E, 215A, 215B, 216A, 216B, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, and 227; and that part of Bexar County tract 1318 included in block group 1 and blocks 201, 202, 203A, 203B, 204A, 204B, 205, 206A, 206B, 206C, 207A, 207B, 208, 209, 210, 211, 212, 213, 217, 219, 220, 221, 222A, 222B, 223A, 223B, 224, 225, 226, 227, 228, 229, 230, 402, 403, 404, 405, 406, 407, 408, 409, 410, 419, 420, 421, 422, and 423; and that part of Bexar County tract 1404 included in block groups 1, 2, 3, and blocks 401, 402, 403, 404, 405, 406, 407, 410, 414, 415, 423, 424, 425, 426, 428, 429, and 430; and that part of Bexar County tract 1415 included in blocks 901B and 902; and that part of Bexar County tract 1417 included in block group 2 and blocks 123A, 123B, 127A, 127B, 127C, 128A, 128B, 129A, 129B, 130A, 130B, 131, 137A, 137B, 138A, and 138B; and that part of Bexar County tract 1419 included in blocks 113A, 113B, 113C, 114, 115, 303A, 303B, 304A, 304B, 305A, 305B, 306A, 306B, 307, 308, 309B, and 313; and that part of Bexar County tract 1501 included in block groups 1, 2, 3, 4, 5, and blocks 620, 621, 622, 623, 627, 628, and 629; and that part of Bexar County tract 1602 included in block group 1 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 301, 302, 304, 305, 306, 307, 308, 309, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, and 321; and that part of Bexar County tract 1605 included in block groups 4 and 5; and that part of Bexar County tract 1609 included in block groups 1 and 7 and blocks 201, 202, 203, 204, 205, 206, 614, 615, 616, 617, 621, and 622.

(g) District 7 is composed of Bexar County tracts 1706, 1707, 1708, 1709, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1801, 1803, 1804, 1805.01, 1805.02, 1806, 1807.01, 1807.02, 1810.03, 1810.04, 1810.05, 1814.01, 1814.02, and 1815.01; and that part of Bexar County tract 1616 included in block 301; and that part of Bexar County tract 1710 included in block groups 1, 2, 3, 7, and 8; and that part of Bexar County tract 1802 included in block groups 5 and 6; and that part of Bexar County tract 1808 included in block groups 2 and 3 and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110A, 110C, 112, 113, 114, and 115; and that part of Bexar County tract 1813 included in block group 6; and that part of Bexar County tract 1815.02 included in block groups 1, 2, 3, and 4; and that part of Bexar County tract 1816 included in block groups 4 and 5 and blocks 108B, 109B, 110B, 111B, 301, 302, 303, 304, 603, 604, 605, 606, 607, and 608; and that part of Bexar County tract 1818.02 included in block 101; and that part of Bexar County tract 1818.03 included in block group 2 and blocks 101, 102A, 102B, 102C, 103, 104, 105, 106, 107, 119, 302, 303, 304, 305, 306, and 307; and that part of Bexar County tract 1818.04 included in blocks 102, 103, 104, 105, 106, 107, 108, 109, and 110.

(h) District 8 is composed of that part of Comal County tract 3101 included in block group 5 and blocks 101, 102A, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113A, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 130, 131, 132, 133, 134, 135, 142, 143, 144, 145, 146, 147, 148, 149, 150, 201, 202, 211, 212, 213, 214, 225, 226, 243, 244, 245, 301, 302, 303, 304,

305, 309, 310, 312, 315, 316, 317, 318, 319, 320, 321, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, and 499; and that part of Comal County tract 3102 included in block group 2 and blocks 110, 111, 118, 125, 127A, 145, 146, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, and 325; and that part of Comal County tract 3103 included in blocks 112B, 212, and 520; and that part of Comal County tract 3104.01 included in block groups 3, 4, 5, 6, and blocks 102, 103, 104, 115, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220A, 220B, 220C, 221, 222, 223, 224, and 225; and that part of Comal County tract 3104.02 included in blocks 201, 206, 207, 208, 302, 401, 402, 403, 404, 405, 406, 407, 408, 410, 411, 412, and 413; and that part of Comal County tract 3105 included in blocks 110, 111, 113, 114, 115, 116, 117, 122, 123, 124, 125, 126, 127, 128, 129, 130, 135, 136, 137, 138, 139, 140, 141, 142, 144, 145, 146, 147, 148, 149, 199X, 199Y, 210, 211, 212, 218, 219, 220, and 222; and that part of Comal County tract 3108 included in blocks 141, 142, 144, 145, 201, 202, 204, 205, 208, 212A, 212B, 214, 217, 218, 219, 220A, 220B, 220C, 221A, 221B, 222, 223A, 223B, 225, 226, 227, 228A, 228B, 228C, 229A, 229B, 230A, 230B, 231B, 232B, 251A, 251B, 252A, and 252B.

(i) District 9 is composed of that part of Comal County tract 3101 included in blocks 102B, 103, 113B, 114, 127, 128, 129, 136, 137, 138, 139, 140, 141, 203, 204, 205, 206, 207, 208, 209, 210, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 227, 306, 307, 308, 311, 313, 314, 322, 323, 324, 325, 326, 327, 431, and 432; and that part of Comal County tract 3102 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 119, 120, 121, 122, 123, 124, 126, 127B, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 147, 199, and 324; and that part of Comal County tract 3103 included in block groups 3 and 4 and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112A, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 213, 214, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, 522, 523, 599, 599Y, and 599Z; and that part of Comal County tract 3104.01 included in blocks 101, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 199, and 220D; and that part of Comal County tract 3104.02 included in block group 1 and blocks 202, 203, 204, 205, 209, 210, 211, 212, 213, 301, 303, 304A, 304B, 305, 306, 307, 308, 309, 310, 311, 312, 313A, 313B, 314, 409, 414, 415, 416A, 416B, and 417; and that part of Comal County tract 3105 included in block groups 3 and 4 and blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 112, 118, 119, 120, 121, 131, 132, 133, 134, 143, 199Z, 201, 202, 203, 204, 205, 206, 207, 208, 209, 213, 214, 215, 216, 217, and 221; and that part of Comal County tract 3106.01 included in blocks 189 and 190; and that part of Comal County tract 3107 included in blocks 330, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342A, 342B, 343, 344A, 344B, 345, 346, 347, 348, 349, 350, 351, and 352; and that part of Comal County tract 3108 included in block group 3 and blocks 101A, 101B, 102, 103, 104, 105, 106A, 106B, 106C, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116A, 116B, 117, 118, 119A, 119B, 120, 121, 122, 123,

124A, 124B, 124C, 124D, 124E, 125A, 125B, 126A, 126B, 127, 128, 129, 130, 131, 132, 133, 134A, 134B, 134C, 135, 136, 137, 138, 139, 140, 143, 199, 203, 206, 207, 209, 210, 211, 213A, 213B, 215A, 215B, 216A, 216B, 216C, 224, 231A, 232A, 233A, 233B, 234A, 234B, 235, 236A, 236B, 237A, 237B, 238, 239A, 239B, 239C, 240, 241, 242, 243, 244A, 244B, 244C, 245A, 245B, 246, 247, 248, 249A, 249B, 250A, 250B, 253, 254A, 254B, 255A, 255B, 256A, 256B, 257A, 257B, and 258; and that part of Comal County tract 3109 included in block group 3 and blocks 101, 102, 103, 104, 105, 106, 108, 110, 136, 137, 142, 143, 144, 145, 146, 147, 148, 149A, 149B, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165A, 165B, 166, 167A, 167B, 168, 169A, 169B, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180A, 180B, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277A, 277B, 277C, 277D, 277E, 278, 279A, 279B, 280, 281, 282, 283A, 283B, 284, 285, 286, 287, 288A, 288B, 289, 290, 291A, 291B, 292, 293, 294A, 294B, 295, 296, and 297; Guadalupe County tracts 2105.01, 2106.01, 2106.02, 2107.01, and 2107.03; and that part of Guadalupe County tract 2105.02 included in block groups 1 and 4 and blocks 201A, 201B, 201C, 202A, 202B, 203, 204, 205, 206, 207, 208, 209, 210A, 210B, 211A, 211B, 212, 213A, 213B, 213C, 213D, 214, 215A, 215B, 216A, 216B, 217A, 217B, 218A, 218B, 218C, 219, 220, 221, 222, 223, 224, 225, 226, 227A, 227B, 227C, 227D, 228, 229, 230A, 230B, 231, 232, 233, 234, 235A, 235B, 236, 237, 238, 239, 240, 241, 243, 299Y, 299Z, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318A, 318B, 319, 320, 321, 322, 323, 324A, 324B, 324C, 325A, 325B, 325C, 327A, 327B, 328A, 328B, 329, 330, 331, 332, 333, 334, and 335; and that part of Guadalupe County tract 2107.04 included in block groups 1, 2, 4, 5, 6, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315A, 315B, 315C, 315D, 316, 317, and 318; and that part of Guadalupe County tract 2108 included in block groups 6 and 7 and blocks 415, 416A, 416B, 419, 501A, 501B, 502A, 502B, 503, 504, 505, 506, 507A, 507B, 508A, 508B, 509A, 509B, 510A, 510B, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529A, 529B, 529C, 529D, 530, 531, 532, 533, 534A, 534B, 534C, 534D, 535A, 535B, 536A, 536B, 536C, 537A, 537B, 538, 539, 555, 556A, 556B, 557, 558A, 558B, 558C, 559, 560A, 560B, 561A, 561B, 562A, 562B, 563A, 563B, and 564. District 9 also includes that part of Comal County tract 3106.01 included in block 194; that part of Comal County tract 3107 included in block 331; that part of Comal County tract 3109 included in block 141; that part of Guadalupe County tract 2105.02 included in block 242; and that part of Guadalupe County tract 2107.04 included in block 319.

(j) District 10 is composed of that part of Hays County tract 0101 included in blocks 137, 138, 142, 148, 237, 238, 239, 240, 241, 242, 243, 244, and 245; and that part of Hays County tract 0103.01 included in blocks 301, 302, 303, 304, 305, 306, 307, 402, 408, 409, 410, 411, 413, 503A, 503B, 504, 505, 506,

510B, 513, 514, 517A, 517B, 518, 519A, 519B, 519C, 520A, 520B, 521A, 521B, 522, 523, 525, 526A, 526B, 527, 528, 529, and 530; and that part of Hays County tract 0103.02 included in blocks 101, 102, 103, 104, 107, 109, 110, 111, 112, 113, 114, 201, 202A, 202B, 203A, 203B, 204, 205, 207, 208, 209, 210, 211, 212, 213, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228A, 228B, 229, 230, 231, 232, 233A, 233B, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, and 251; and that part of Hays County tract 0104 included in block group 1 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 301, 302, 303, 304, 305, 306B, 307, 308, 309A, 309B, 316A, 316B, 317A, 317B, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330A, 330B, 331A, 331B, 332, 333, 334, 335, 336, 337A, 337B, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, and 399R; and that part of Hays County tract 0105 included in block group 2 and blocks 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 313, 314, 408, 409A, 409B, 411, 412, 413A, 413B, 414, 415, 416A, 416B, and 417; and that part of Hays County tract 0106 included in blocks 332, 333, 334, 335, and 337.

(k) District 11 is composed of Caldwell County BNA 9605 and that part of Caldwell County BNA 9601 included in blocks 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 348, 349, 350, 354, 355, 356, 357, 358, 359, 360, 361, 362, 405A, 405B, 405C, 405D, 405E, 406, 407A, 407B, 408, 409, 410A, 410B, 410C, 410D, 410E, 411A, 411B, 412A, 412B, 412C, 412D, 413A, 413B, 413C, 414A, 414B, 415B, 416A, 416B, 416C, 417, 418A, 418B, 419A, 419B, 420, 421, 422A, 422B, 423, 424, 425, 426, 427, 428, 429, 430A, 430B, 431A, 431B, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441A, 441B, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, and 499; and that part of Caldwell County BNA 9602 included in blocks 209, 217, 218, 308, 309A, 309B, 309C, 310, 311, 312, 313, 314A, 314B, 314C, 314D, 315A, 315B, 316, 317, 318A, 318B, 319A, 319B, 319C, 320, 328, 329, 332, 333, and 334; and that part of Caldwell County BNA 9603 included in block groups 3 and 4 and blocks 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 217, and 218; and that part of Caldwell County BNA 9604 included in block group 3 and blocks 102, 103, 106, 107, 108, 109, 110, 119, 120, 121, 122, 123, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238A, 238B, 239, 240, 241, 242, 243, 244, and 245; and that part of Caldwell County BNA 9606 included in blocks 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 246, 288, 293, and 294; and that part of Caldwell County BNA 9607

included in block groups 4 and 5 and blocks 103, 104, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120A, 120B, 134, 137, 138, 139, 140, 141, 142A, 142B, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 204, 205, 206, 207, 208, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 258, 259, 260, 261, 262, 263, 264, 265, 266, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313A, 313B, 314, 315, 320, 321, 322, 323, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 347; Hays County tract 0102; and that part of Hays County tract 0101 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 139, 140, 141, 143, 144, 145, 146, 147, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, and 236; and that part of Hays County tract 0103.01 included in block groups 1 and 2 and blocks 308, 309, 310, 311, 401, 403, 404, 405, 406, 407, 412, 414, 415, 416, 417, 418, 501A, 501B, 501C, 501D, 502A, 502B, 507A, 507B, 508A, 508B, 509A, 509B, 510A, 511, 512, 515, 516, and 524; and that part of Hays County tract 0103.02 included in blocks 105, 106, 108A, 108B, 206, 214A, 214B, 215, and 216; and that part of Hays County tract 0104 included in blocks 216, 217, 218, 219A, 219B, 220, 221A, 221B, 306A, 310A, 310B, 311, 312, 313, 314, and 315; and that part of Hays County tract 0105 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 116, 134, 135, 136, 137, 312, 401, 402A, 402B, 403A, 403B, 404, 405, 406, 407, 410A, 410B, 418, 419A, 419B, 420A, 420B, 421, 422, and 423; and that part of Hays County tract 0106 included in block groups 1 and 2 and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 336, 401A, 401B, 401C, 401D, 401E, 401F, 402, 403, 404, 405, 406, 407, 408, 411, 412, 413, 414, 415, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435A, 435B, 436, 437, 438, 439A, 439B, 440, 441, 442A, 442B, 442C, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, and 477; and that part of Hays County tract 0107 included in block groups 1, 3, 4, and blocks 201, 202, 203, 204, 205, 206, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255A, 255B, 256, 257, 258, 259, 260, 261, 262A, 262B, 262C, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293A, 293B, 294, 295, and 296; and that part of Hays County tract 0108.02 included in blocks 130, 137, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 501, 502, 524, 525, 532, 533, 534, 655, 656, 657, 663, 664, 673, 674, 675, and 676; and that part of Hays County tract 0109.02 included in blocks 123, 126, 127, 132B, 312, 313A, 313B, and 399;

and that part of Hays County tract 0109.04 included in block groups 2, 4, 5, and blocks 101, 102A, 102B, 102C, 102D, 112, 113A, 113B, 113C, 114A, 114B, 114C, 115A, 115B, 301A, 301B, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 317, 318A, 318B, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333A, 333B, 334, 335, 336, 337, 338, 339, 340, 341, and 342. District 11 also includes that part of Caldwell County BNA 9601 included in block 415A; that part of Hays County tract 0106 included in block 409; that part of Hays County tract 0108.02 included in blocks 526 and 601; that part of Hays County tract 0109.02 included in block 125; that part of Hays County tract 0109.03 included in block 223; and that part of Hays County tract 0109.04 included in block 104.

(l) District 12 is composed of Medina County BNA 9903 included in blocks 201A, 201B, 201C, 202, 203, 204A, 204B, 204C, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223A, 223B, 223C, 224, 225A, 225B, 226A, 226B, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242A, 243, 244, 245, 247, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 358, 359A, 362A, 362B, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 401, 402A, 402B, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, and 435; and that part of Medina County BNA 9905 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153A, 153B, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173A, 173B, 174, 175, 176, 177, 178, 181A, 181B, 182, 201, 202, 203, 215, 222, 223, 224, 225, 235, 301, 302, 303, 307, 308, 315, 338, 350, 351, 353, 362, 430, 431, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 461, 462, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, and 499; and that part of Medina County BNA 9906 included in blocks 152, 153, 154, 155, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 226, 227, 228, 229, 230, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, and 274; and that part of Medina County BNA 9907 included in blocks 101, 111, 112, 113, 114, 115, 116, 117, 118, 133, 134, 135, 136, 137, 138, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 165, 211A, 212, 213, 214, 215, 219A, 219B, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231,

321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 340A, 340B, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358A, 358B, 359, 360A, 360B, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371A, 371B, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, and 413A.

(m) District 13 is composed of that part of Atascosa County BNA 9602 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146A, 146B, 147A, 147B, 207, 208, 209, 210, 211, 501A, 501B, 502, 503, 504, 505A, 505B, 506, 507A, 507B, 508A, 508B, 509, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531A, 531B, 532A, 532B, 533, 534A, 534B, 535, and 536; Medina County BNAs 9901 and 9904; and that part of Medina County BNA 9903 included in block group 1 and blocks 242B, 242C, 246A, 246B, 246C, 246D, 248, 249, 250, 251, 357A, 357B, 359B, 360, 361, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 436A, 436B, and 437; and that part of Medina County BNA 9905 included in blocks 179, 180, 183A, 183B, 184A, 184B, 185, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 216, 217, 218, 219, 220, 221, 226, 227, 228, 229, 230, 231, 232, 233, 234, 236, 237, 238, 239, 240, 241, 242, 243, 244, 304, 305, 306, 309, 310, 311, 312, 313, 314, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 352, 354, 355, 356, 357, 358, 359, 360A, 360B, 361, 363, 364, 365, 366, 367, 368, 369A, 369B, 370, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 432, 433, 434, 435, 436, 458, 459, 460, 463, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, and 497; and that part of Medina County BNA 9906 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 156, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 231, 232, 233, 275, 276, 277, 278, 279, 280, and 281; and that part of Medina County BNA 9907 included in blocks 102, 103, 104, 105, 106, 107A, 107B, 107C, 108, 109, 110, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 139, 140, 141, 142, 143, 144, 145, 146, 157, 158, 159, 160, 161, 162, 163, 164, 166, 167, 201, 202, 203, 204, 205, 206A, 206B, 207, 208, 209, 210, 211B, 216, 217A, 217B, 218, 232A, 232B, 233, 234, 235, 236, 237, 238, 301, 302A, 302B, 303, 304, 305, 306, 307, 308, 309A, 309B, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 333, 334, 335, 336, 337, 338, 339, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413B, 414, 415, 416, 417, 418, 419, 420A, 420B, 420C, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, and 448. District 13 also includes that part of Atascosa County BNA 9602 included in block 510.

(n) District 14 is composed of that part of Uvalde County BNA 9502 included in block groups 3 and 4 and blocks 102, 103, 106, 117, 140, 142, 201, 202, 203, 204, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216A, 216B, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239A, 239B, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 278, 279, 280, 281, 282, 283, 284, 285, 286, 288, 296, 297, 299, 299R, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, and 541; and that part of Uvalde County BNA 9503 included in block groups 2, 3, 4, 5, 6, and blocks 101B, 101C, 102, 103, 104, 105, 106, 107, 108, 109A, 109B, 110, 111, 112, 113, 114, 115, 116A, 116B, 116C, 117A, 117B, 118, 119, 120, 121, 122, 123, 124, 126, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 164A, 164B, 165, 166, 167, 168, 169, 170, 171, 172, 173, and 174; and that part of Uvalde County BNA 9504 included in block group 4 and blocks 314, 316, and 319; and that part of Uvalde County BNA 9505 included in block groups 2 and 3 and blocks 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126A, 126B, 126C, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139A, 139B, 140, 141, 142A, 142B, 143A, 143B, 144, 145, 146, 147, 148, 149A, 149B, 150, 151, and 152.

(o) District 15 is composed of Uvalde County BNA 9501 and that part of Uvalde County BNA 9502 included in block group 6 and blocks 101, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 141, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195A, 195B, 196A, 196B, 197, 205, 275, 276, 277, 287, 289, 290, 291, 292, 293, 294, 295, 501, 502, 503, 504, 505, 506, 507A, 507B, 508, 509A, 509B, 509C, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, and 597; and that part of Uvalde County BNA 9503 included in blocks 101A, 101D, 125, 127, 128, 129, 130, 131, 132, 157A, 157B, 158, 159, 160, 161, 162, 163, 175A, and 175B; and that part of Uvalde County BNA 9504 included in block groups 1 and 2 and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 315, 317, 318, 320, 321, 322, 323, 324, 325, 326, 327, and 328; and that part of Uvalde County BNA 9505 included in blocks 101A, 101B, 102, 103, 104, 105, 106, 107, 108, 109, 110A, 110B, 110C, 111, and 112.

(p) Each district described by this section includes only the part of the described geographic area that is included in the boundaries of the authority as provided by Section 1.04 of this article.

(q) In this section, the terms "tract," "block," "block group," and "BNA" (block numbering area) mean the geographic areas identified by those terms in

the Redistricting Map Data Base for the State of Texas prepared by the Texas Legislative Council and distributed by the council to the State Data Center, Texas Department of Commerce, on March 22, 1991, for public distribution by the State Data Center.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Puente moved to adopt the conference committee report on **HB 3189**.

The motion prevailed. (King recorded voting no)

SB 673 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Berlanga submitted the conference committee report on **SB 673**.

Representative Berlanga moved to adopt the conference committee report on **SB 673**.

A record vote was requested.

The motion prevailed by (Record 591): 139 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Alonzo; Carona; Hudson; Lewis, R.; Moreno; Price; Rangel; Solis; Williamson.

(Thompson in the chair)

SB 1542 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Allen submitted the conference committee report on **SB 1542**.

Representative Allen moved to adopt the conference committee report on **SB 1542**.

The motion prevailed.

HB 466 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Brimer submitted the following conference committee report on **HB 466**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 466** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Cain	Brimer
Brown	Cook
Moncrief	Goodman
Nixon	Nixon
Whitmire	Talton
On the part of the Senate	On the part of the House

HB 466, A bill to be entitled An Act relating to the compilation and use of information pertaining to criminal combinations; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 61 to read as follows:

**CHAPTER 61. COMPILATION OF INFORMATION PERTAINING TO A
CRIMINAL COMBINATION**

Art. 61.01. DEFINITIONS. In this chapter:

(1) "Combination" has the meaning assigned by Section 71.01, Penal Code.

(2) "Child" has the meaning assigned by Section 51.02, Family Code.

(3) "Criminal information" means facts, material, photograph, or data reasonably related to the investigation or prosecution of criminal activity.

(4) "Criminal activity" means conduct that is subject to prosecution.

(5) "Criminal justice agency" has the meaning assigned by Article 60.01 and also means a municipal or county agency, or school district law enforcement agency, that is engaged in the administration of criminal justice under a statute or executive order.

(6) "Administration of criminal justice" has the meaning assigned by Article 60.01.

Art. 61.02. CRIMINAL COMBINATION INFORMATION SYSTEM. A criminal justice agency may compile criminal information into a system for the purpose of investigating or prosecuting the criminal activities of criminal combinations. The information may be compiled on paper, by computer, or in any other useful manner.

Art. 61.03. RELEASE OF INFORMATION. (a) A criminal justice agency that maintains criminal information under this chapter may release the information on request to:

(1) another criminal justice agency;

(2) a court; or

(3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

(b) A criminal justice agency or court may use information received under this article only for the administration of criminal justice. A defendant may use information received under this article only for a defense in a criminal proceeding.

(c) A local criminal justice agency may not send information collected under this chapter to a statewide database.

Art. 61.04. CRIMINAL INFORMATION RELATING TO CHILD. (a) Notwithstanding Section 51.14, Family Code, criminal information relating to a child associated with a combination may be compiled and released under this chapter regardless of the age of the child.

(b) A criminal justice agency that maintains information under this chapter may release the information to an attorney representing a child who is a party to a proceeding under Title 3, Family Code, if the juvenile court determines the information:

(1) is material to the proceeding; and

(2) is not privileged under law.

(c) An attorney may use information received under this article only for a child's defense in a proceeding under Title 3, Family Code.

Art. 61.05. UNAUTHORIZED USE OR RELEASE OF CRIMINAL INFORMATION. (a) A person commits an offense if the person knowingly:

(1) uses criminal information obtained under this chapter for an unauthorized purpose; or

(2) releases the information to a person who is not entitled to the information.

(b) An offense under this article is a Class A misdemeanor.

Art. 61.06. DESTRUCTION OF RECORDS. Information collected under this chapter must be destroyed after two years if the individual has not been charged with criminal activity.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Brimer moved to adopt the conference committee report on **HB 466**.

The motion prevailed. (Conley, Thompson, and S. Turner recorded voting no)

HB 943 - MOTION TO ADOPT CONFERENCE COMMITTEE REPORT

Representative S. Turner submitted the conference committee report on **HB 943**.

(Speaker in the chair)

Representative S. Turner moved to adopt the conference committee report on **HB 943**.

A record vote was requested.

The motion was lost by (Record 592): 62 Yeas, 75 Nays, 1 Present, not voting. (The vote was reconsidered later today, and the conference committee report on **HB 943** was adopted by record 597.)

Yeas — Alexander; Alonzo; Alvarado; Bailey; Berlanga; Bosse; Conley; Cook; Counts; Cuellar, H.; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dukes; Dutton; Edwards; Ehrhardt; Farrar; Gallego; Giddings; Goodman; Gray; Greenberg; Gutierrez; Hernandez; Hightower; Hirschi; Hochberg; Hunter, T.; Junell; King; Longoria; Luna; Marchant; Maxey; McCoulskey; McDonald; Moreno; Munoz; Naishtat; Oakley; Oliveira; Pickett; Puente; Rangel; Rhodes; Rodriguez; Sadler; Seidlits; Serna; Solis; Telford; Thompson; Tillery; Torres; Turner, S.; Van de Putte; Wolens; Yarbrough; Zbranek.

Nays — Allen; Brady; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Corte; Crabb; Craddick; Culberson; Dear; Delisi; Denny; Driver; Duncan; Eiland; Elkins; Finnell; Glaze; Goolsby; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter, B.; Jackson; Janek; Johnson; Jones, D.; Kamel; Krusee; Kubiak; Kuempel; Lewis, R.; Madden; McCall; Moffat; Mowery; Nixon; Ogden; Park; Patterson; Pitts; Place; Rabuck; Ramsay; Reyna; Romo; Rusling; Saunders; Shields; Solomons; Staples; Stiles; Swinford; Talton; Uher; Walker; West; Williamson; Willis; Wohlgemuth; Woolley; Yost.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Averitt; Black; Carona; Hudson; Jones, J.; Lewis, G.; Price; Raymond; Siebert; Smihee; Turner, B.

MESSAGE FROM THE SENATE

Austin, Texas, May 28, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HB 1214 by Kamel, Raymond, Chisum, Stiles, Hartnett, et al. (Sponsor-Barrientos), relating to the establishment of a prepaid higher education tuition program.

HCR 28 by Craddick, paying tribute to the life of Richard Milhous Nixon.

HCR 29 by Craddick, paying tribute to the life of Patricia Ryan Nixon.

HCR 192 by Craddick, honoring Don and Nell Furgeson on the occasion of their retirement.

SCR 178 by Ratliff, corrective amendments to SB 1.

I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on the following: **SB 374** by viva voce vote.

I am directed by the Senate to inform the House that the Senate has concurred in House Amendments to the following: **SCR 41** by viva voce vote.

Respectfully,
Betty King
Secretary of the Senate

HB 1483 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Tillery submitted the following conference committee report on **HB 1483**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1483** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Cain	Tillery
Sibley	Janek
Leedom	Glaze
Armbrister	Hirschi
Brown	

On the part of the Senate	On the part of the House
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HB 1483, A bill to be entitled An Act relating to the regulation of certain practices by funeral directors, embalmers, and mortuary schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection H, Section 3, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

H. The commission may, after a hearing as provided by Section 6C of this Act, reprimand, assess an administrative penalty, revoke, suspend, or probate

the suspension of a license or provisional license, or impose any combination of these sanctions against a licensed funeral director, a licensed embalmer, or a provisional licensee. The commission may assess an administrative penalty without a hearing if the penalty is assessed in the manner provided by Section 6G of this Act. Action taken by the commission under this section may be based only on a violation of this Act or a rule adopted under this Act. The commission may refuse without a hearing to license a person or to permit a person to serve as a provisional licensee if the person has violated this Act or a rule adopted under this Act. A person whose license or provisional license application is refused under this subsection may appeal the decision by requesting a hearing not later than the 30th day after the date of the refusal. The commission and the person whose application for license or provisional license is refused may agree to the issuance of a probationary license or the commission may, after a hearing, order that a license be issued on a probationary basis. A violation of this Act includes the following:

1. The presentation to the commission of any license, certificate, or diploma that was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination;

2. Conviction of:

- (A) a felony; or

- (B) a misdemeanor related to the practice of embalming or funeral directing;

3. Being unfit to practice as a funeral director and/or embalmer by reason of insanity and having been adjudged by a court of competent jurisdiction to be of unsound mind;

4. The use of any statement that misleads or deceives the public, including but not limited to false or misleading statements regarding (1) any legal, religious, or cemetery requirement for funeral merchandise or funeral services, (2) the preservative qualities of funeral merchandise or funeral services in preventing or substantially delaying natural decomposition or decay of human remains, (3) the airtight or watertight properties of a casket or outer enclosure, or (4) representations as to licensed personnel in the operation of a funeral establishment;

5. The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the commission for license to practice as a funeral director and/or embalmer;

6. Altering, with fraudulent intent, any funeral director and/or embalmer license, certificate, or transcript of license or certificate;

7. The use of any funeral director and/or embalmer license, certificate, diploma or transcript of any such funeral director and/or embalmer license, certificate, or diploma that has been fraudulently purchased, issued, counterfeited, or materially altered;

8. The impersonation of, or acting as proxy for, another in any examination required by this Act for a funeral director and/or embalmer license;

9. The impersonation of a licensed funeral director or embalmer as authorized by this Act, or permitting or allowing another to use a person's license or certificate to practice as a funeral director or embalmer in this state;

10. A violation of Section 1, 5, or 9, Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, Vernon's Texas Civil Statutes), or a rule adopted under that Act;

11. Taking custody of a dead human body without the permission of the person or the agent of the person authorized to make funeral arrangements for the deceased, or without the permission of the medical examiner or justice of the peace when a medical examiner or justice of the peace has jurisdiction over the body under Articles 49.02, 49.03, 49.04, and 49.05, Code of Criminal Procedure, refusing to promptly surrender a dead human body to a person or agent authorized to make funeral arrangements for the deceased, or embalming a body without the express written or oral permission of a person authorized to make funeral arrangements for the deceased or without making a documented reasonable effort over a period of at least three (3) hours to obtain the permission;

11A. Embalming or attempting to embalm without proper authority a dead human body. Evidence of embalming or attempting to embalm includes, but is not limited to, the making of any incision on the body, the raising of any circulatory vessel of the body, or the injection of any chemical into the body;

12. Wilfully making any false statement on a certificate of death or on a document required by this Act or by a rule adopted under this Act;

13. Employment directly or indirectly of any provisional licensee, agent, assistant, embalmer, funeral director, employee, or other person on a part or full-time basis, or on commission, for the purpose of soliciting individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director, embalmer, or funeral establishment;

14. Presentation of false certification of work done as a provisional licensee;

15. Unfitness by reason of present substance abuse;

16. Whenever a licensee, provisional licensee, or any other person, whether employee, agent, representative, or one in any manner associated with a funeral establishment engages in solicitation as defined in this Act;

17. Failure by the Funeral Director in Charge to provide licensed personnel for direction or personal supervision for a "first call," as that term is defined in this Act;

18. Misappropriation of any funds held by a licensee, funeral establishment, including its employees and agents, or other depository, that create an obligation to provide a funeral service or merchandise, including retention for an unreasonable time of excess funds paid by or on behalf of the consumer for which the consumer is entitled to a refund;

19. Performing acts of funeral directing or embalming, as those terms are defined in this Act, that are outside the licensed scope and authority of the licensee, or performing acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts;

20. Engaging in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a consumer;

21. Statement or implication by a funeral director or embalmer that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased;

22. Failure by any person arranging for funeral services or merchandise to:

(A) provide a prospective customer with a copy of the brochure required by Section 6E of this Act at the beginning of the arrangement process;

(B) provide a retail price list to an individual inquiring in person about any funeral service or merchandise for that person to keep;

(C) explain to the customer or prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before the presentation of the retail price list to that person; or

(D) provide general price information by telephone within a reasonable time;

23. Failure by any person arranging for funeral services or merchandise to provide each customer at the conclusion of the arrangement process a written memorandum or funeral purchase agreement signed by the funeral director making the arrangements itemizing the cost of funeral services and funeral merchandise selected by the customer; however, if the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a written memorandum that itemizes the discount provided by the package arrangement. The use of unit pricing does not affect the presentation of the retail price list as required by Subdivision 22 of this subsection;

24. Restricting, hindering, or attempting to restrict or hinder (1) the advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers, or (2) agreements for funeral services between any consumer or group of consumers and funeral directors or embalmers;

25. Failure to retain and make available to the commission, upon request, copies of all price lists, written notices, embalming documents, and memoranda of agreement required by this Act for two (2) years after the date of their distribution or signing;

26. Violation of this Act, any rule adopted under this Act, an order by the commission revoking, suspending, or probating a license, an order assessing an administrative penalty, or an agreement to pay an administrative penalty regardless of whether the agreement is express or implied by Section 6G(d) of this Act;

27. Dishonest conduct, wilful conduct, negligence, or gross negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public;

28. Allowing the use of a dead human body by an ~~unlicensed~~ embalming establishment for research or educational purposes without complying with Section 4A of this Act ~~[the written permission of the family or person arranging the funeral]; [and]~~

29. Causing the execution of a document by the use of fraud, deceit, or misrepresentation; and

30. Allowing the presence or participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with Section 4A of this Act.

SECTION 2. Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended by adding Section 4A to read as follows:

Sec. 4A. USE OF BODY BY SCHOOL OF MORTUARY SCIENCE. (a) A school or college of mortuary science may not use a dead human body for educational or instructional purposes without the written consent of a person authorized to consent to such use.

(b) A funeral director or embalmer may not release a dead human body for delivery to a school or college of mortuary science, and a school or college of mortuary science may not accept a dead human body without actual possession of the written consent required under Subsection (a) of this section.

(c) A copy of the written consent required under Subsection (a) of this section shall be retained for a minimum of two years by the funeral home and permanently by the school or college of mortuary science. The records of the funeral home maintained under this subsection shall be reasonably available for inspection by the commission, the person who provided the consent, or the next of kin of the deceased person. The records of the school or college of mortuary science shall be reasonably available for inspection by the commission.

(d) A written consent form required under this section must contain, in the same size print as the remainder of the form, the following statement immediately above the signature line for the form:

"The undersigned authorizes and directs the funeral home, including apprentices or mortuary students under the direct supervision of a licensed embalmer, and the funeral home's employees, independent contractors, and agents to care for, embalm, and prepare the body of the decedent. The undersigned acknowledges that this authorization encompasses permission to embalm at the funeral home facility or at another facility equipped for embalming, including a school or college of mortuary science."

(e) The provisions of this Section 4A shall not apply with respect to a dead human body obtained by a school or college of mortuary science pursuant to the provisions relating to the Texas Anatomical Board of the Texas Anatomical Gift Act under Chapters 691 and 692, Health and Safety Code.

SECTION 3. This Act takes effect September 1, 1995, and applies only to the use of a dead human body for educational or instructional purposes on or after that date.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Tillery moved to adopt the conference committee report on **HB 1483**.

The motion prevailed.

HB 2349 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Kuempel submitted the following conference committee report on **HB 2349**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2349** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Kuempel
Bivins	R. Lewis
Lucio	Saunders
Ratliff	Walker
Wentworth	Yost
On the part of the Senate	On the part of the House

HB 2349, A bill to be entitled An Act relating to solid waste management and disposal.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Sections 361.040 and 361.041 to read as follows:

Sec. 361.040. FEDERAL STANDARDS FOR SANITARY LANDFILLS. The commission may not impose a construction or operating standard or requirement on a sanitary landfill which is required by the United States Environmental Protection Agency to operate in accordance with 40 CFR Part 258 that is more stringent than a standard or requirement required by the United States Environmental Protection Agency under Subchapter IV, Solid Waste Disposal Act, as amended (42 U.S.C. Section 6941 et seq.). The commission may not require the installation of a landfill gas collection and control system at a sanitary landfill unless a landfill gas collection and control system is required to be installed under Subchapter IV, Solid Waste Disposal Act, as amended (42 U.S.C. Section 6941 et seq.), or under Section 111 or 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.), or as required by the commission for remedial activities necessary to protect human health, safety, and the environment. In developing sanitary landfill standards or requirements, the commission shall allow the maximum flexibility permissible under regulations of the United States Environmental Protection Agency for alternative landfill and alternative gas collection and control system designs.

Sec. 361.041. REVIEW OF SANITARY LANDFILL STANDARDS.
(a) The owner of a sanitary landfill who in good faith believes that a standard or requirement the commission imposes on the landfill is more stringent than

a standard or requirement required by the United States Environmental Protection Agency under Subchapter IV, Solid Waste Disposal Act, as amended (42 U.S.C. Section 6941 et seq.), may submit to the executive director a written request for a review of the commission's standard or requirement and the federal standard or requirement. The request must summarize the owner's interpretation of the federal standard or requirement that the owner believes is less stringent than the standard or requirement imposed by the commission.

(b) On receipt of a request for a review under Subsection (a), the executive director shall review the commission's standard or requirement related to the request and the owner's interpretation of the federal standard or requirement. The executive director shall issue an opinion on whether the standard or requirement at issue is more stringent than the United States Environmental Protection Agency standard or requirement before the 31st day after the executive director receives the request for review.

SECTION 2. Section 361.034(a), Health and Safety Code, is amended to read as follows:

(a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D and related activities to determine the appropriateness of the fee structures;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023;

(3) projections of the volume of waste by type of waste, disposition of waste, and remaining capacity or capacity used for the treatment and disposal of the waste;

(4) projections of the availability of adequate capacity in this state for the management of all types of hazardous waste generated within the state and a report of the amounts, types, and sources of hazardous waste imported into and exported from the state in the previous year;

(5) an evaluation of the progress made and activities engaged in consistent with the state's municipal solid waste management plan, in particular the progress toward meeting the waste reduction goal established by Section 361.0201(d);

(6) an evaluation of the progress made by local governments under the solid waste management plans;

(7) the status of state procurement under Section 361.426 of products made of recycled materials or that are reusable, including documentation of any decision not to purchase those products;

(8) the status of the governmental entity recycling program established under Section 361.425, including the status of collection and storage procedures and program evaluations required by that section;

(9) the status of the public education program described in Section 361.0202; [and]

(10) recommendations to the governor and to the legislature for improving the management of municipal solid waste in the state;

(11) a statement confirming that the commission complies with Section 361.040; and

(12) a digest of requests for review received under Section 361.041, identifying the state and federal standards or requirements reviewed and summarizing the executive director's opinion issued for each request.

SECTION 3. Section 363.046, Health and Safety Code, is amended to read as follows:

Sec. 363.046. DUTIES. The advisory council shall:

(1) review and evaluate the effect of state policies and programs on municipal solid waste management;

(2) make recommendations to the commissioner and the board on matters relating to municipal solid waste management;

(3) recommend legislation to the board to encourage the efficient management of municipal solid waste;

(4) recommend policies to the board for the use, allocation, or distribution of the planning fund that include:

(A) identification of statewide priorities for use of funds;

(B) the manner and form of application for financial assistance; and

(C) criteria, in addition to those prescribed by Section 363.093(d), to be evaluated in establishing priorities for providing financial assistance to applicants;

(5) conduct a continuing review of the standards and requirements the board imposes on sanitary landfills to ensure that the board does not impose a standard or requirement that is more stringent than a standard or requirement required by the United States Environmental Protection Agency under Subchapter IV, Solid Waste Disposal Act, as amended (42 U.S.C. Section 6941 et seq.), and shall report its findings to the board on or before September 1 of each year; and

(6) ~~(5)~~ recommend to the commissioner special studies and projects to further the effectiveness of municipal solid waste management and resource recovery.

SECTION 4. The Municipal Solid Waste Management and Resource Recovery Advisory Council shall make the first report to the Texas Natural Resource Conservation Commission required by Section 363.046(5), Health and Safety Code, as added by this Act, not later than September 1, 1996.

SECTION 5. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.071 to read as follows:

Sec. 361.071. PERMITS FROM OTHER AGENCIES. The owner or operator of a municipal solid waste management facility other than a facility that engages in combustion is not required to obtain a permit from any agency of the state other than the commission, or any permit from the commission other than a permit issued under this chapter, to store, process, treat, dispose of, or destroy municipal solid waste unless:

(1) a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code;

(2) a permit is required by Part C or D, Title I, federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.), for a major source or a major modification; or

(3) a permit is required by the federal operating permit program pursuant to Section 129(e), Title I, federal Clean Air Act (42 U.S.C. Section 7429(e)).

SECTION 6. Section 361.088, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) Solid waste generated incidental to the operation of a permitted commercial hazardous waste disposal well facility, including storage and processing residues, laboratory waste, and other hazardous and nonhazardous waste streams resulting from authorized activities at the facility, may be disposed of in an on-site or adjoining landfill if the facility is located in an arid county which receives 15 inches or less of average annual precipitation and the permittee obtains a permit modification from the commission. Compliance with the public meeting, notice, and comment requirements of Section 361.0791 and 40 CFR Part 270.42 shall satisfy the public participation requirements of this chapter if the facility previously was the subject of a contested case hearing at the commission.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Kuempel moved to adopt the conference committee report on **HB 2349**.

The motion prevailed. (T. Hunter recorded voting no)

HB 1541 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Torres submitted the following conference committee report on **HB 1541**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1541** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Barrientos
Gallegos
Truan
Wentworth

Torres
Brimer
Goolsby
Hilbert
Yarbrough

On the part of the Senate

On the part of the House

HB 1541, A bill to be entitled An Act relating to the prohibition of the sale or transfer of certain plumbing fixtures.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 14, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) A person, corporation, or other entity may not sell, donate, or transfer a water closet plumbing fixture or other equipment that uses water that does not comply with a state-approved plumbing code and that may permit the backflow of nonpotable substances into the potable water supply. The board shall adopt rules under this subsection that include a list describing the types of plumbing fixtures to which this subsection applies.

SECTION 2. (a) This Act takes effect September 1, 1995.

(b) The change in law made by Section 1 of this Act applies only to a plumbing fixture sold, donated, or transferred on or after January 1, 1996.

(c) The Texas State Board of Plumbing Examiners shall adopt rules under this Act not later than January 1, 1996.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Torres moved to adopt the conference committee report on **HB 1541**.

The motion prevailed.

SCR 178 - ADOPTED
(Sadler - House Sponsor)

Representative Sadler moved to suspend all necessary rules to take up and consider at this time **SCR 178**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

SCR 178

WHEREAS, Senate Bill No. 1 has been adopted by the senate and the house of representatives; and

WHEREAS, The bill contains typographical errors that should be corrected; now, therefore, be it

RESOLVED, That the enrolling clerk of the senate be hereby instructed to make the following corrections:

(1) In SECTION 1 of the bill, in Section 7.056(e)(3)(A), Education Code, strike the reference to "Section 28.001" and substitute "Section 28.002".

(2) In SECTION 1 of the bill, in Section 7.057(b), Education Code, strike "an independent" and substitute "a".

(3) In SECTION 1 of the bill, in Section 12.013(b)(3)(E), strike "Sections 25.084-28.086" and substitute "Sections 25.085-25.087".

(4) In SECTION 1 of the bill, in Section 21.041(b), Education Code, at the end of Subdivision (9), add "and".

(5) In SECTION 1 of the bill, in Section 21.041(b), Education Code, strike Subdivision (10) and renumber Subdivision (11) appropriately.

(6) In SECTION 1 of the bill, in Section 21.301(d), Education Code, strike "an independent" and substitute "a".

(7) In SECTION 1 of the bill, in Section 26.005, Education Code, strike "Section 39.023(a) or (b)" and substitute "Section 39.023(a), (b), or (c)".

(8) In SECTION 1 of the bill, in Section 38.004(a), Education Code, strike "Texas Department of Human Services" and substitute "Department of Protective and Regulatory Services".

(9) In SECTION 1 of the bill, in Sections 39.025(a)(1) and (2), Education Code, strike the references to "Section 39.023(b)" and substitute "Section 39.023(c)".

(10) In SECTION 1 of the bill, in Section 39.027(a), Education Code, strike the reference to "Subsection (d)" and substitute "Subsection (c)".

(11) In SECTION 1 of the bill, in Section 42.201(f), Education Code, strike "Section 39.052" and substitute "Section 39.053".

(12) In SECTION 1 of the bill, in Section 42.401(3), Education Code, strike "Section 28.001" and substitute "Section 28.002".

(13) In SECTION 1 of the bill, in Section 43.012(f), Education Code, between "pursuant" and "a", insert "to".

(14) In SECTION 1 of the bill, in Section 44.032(f), Education Code, strike the reference to "Section 44.031(a)" and substitute "Section 44.031(a) or (b)".

(15) In SECTION 1 of the bill, in Section 45.082(c), Education Code, strike "determined that the real property is not required for the current needs of the district" and substitute "comply with this section".

(16) In SECTION 2 of the bill, in Section 132.102(c)(1), Education Code, strike "[;] or" and substitute "[, or]".

(17) In SECTIONS 78(a) and (b) of the bill, strike "licensed school psychologist" and substitute "licensed specialist in school psychology".

The resolution was adopted without objection.

HB 1662 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hilderbran submitted the following conference committee report on **HB 1662**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1662** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Zaffirini
Harris
Moncrief
West

On the part of the Senate

Hilderbran
J. Jones
Naishtat
Swinford

On the part of the House

HB 1662, A bill to be entitled An Act relating to the powers and duties of the Department of Protective and Regulatory Services; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Human Resources Code, is amended by adding Chapter 40 to read as follows:

CHAPTER 40. DEPARTMENT OF PROTECTIVE AND
REGULATORY SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. DEFINITIONS. In this subtitle:

(1) "Board" means the Board of Protective and Regulatory Services.
(2) "Commission" means the Health and Human Services Commission.
(3) "Department" means the Department of Protective and Regulatory Services.

(4) "Executive director" means the executive director of the Department of Protective and Regulatory Services.

Sec. 40.002. DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES; RESPONSIBILITY. (a) The Department of Protective and Regulatory Services is composed of the board, the executive director, an administrative staff, and other officers and employees necessary to efficiently carry out the purposes of this chapter.

(b) The department is the state agency with primary responsibility for:

(1) providing protective services for children and elderly and disabled persons, including investigations of alleged abuse, neglect, or exploitation in facilities of the Texas Department of Mental Health and Mental Retardation;
(2) providing family support and family preservation services; and
(3) regulating child-care facilities and child-care administrators.

(c) The department is the state agency designated to cooperate with the federal government in the administration of programs under:

(1) Parts B and E, Title IV, federal Social Security Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); and
(2) other federal law for which the department has administrative responsibility.

(d) The department shall cooperate with the United States Department of Health and Human Services and other federal and state agencies in a reasonable manner and in conformity with the provisions of federal law and this subtitle to the extent necessary to qualify for federal assistance in the delivery of services.

(e) If the department determines that a provision of state law governing the department conflicts with a provision of federal law, the department may adopt policies and rules necessary to allow the state to receive and spend federal matching funds to the fullest extent possible in accordance with the federal statutes, this subtitle, and the state constitution and within the limits of appropriated funds.

Sec. 40.003. SUNSET PROVISION. The Department of Protective and Regulatory Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 1997.

Sec. 40.004. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

(a) The department shall develop and implement policies that provide the public with a reasonable opportunity to appear before the department and to speak on any issue under the jurisdiction of the department.

(b) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(c) The department by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and telephone numbers of appropriate departmental personnel for the purpose of directing complaints to the department. The department may provide for that notification:

(1) on each registration form, application, or written contract for services of a person regulated by the department;

(2) on a sign prominently displayed in the place of business of each person regulated by the department; or

(3) in a bill for a service provided by a person regulated by the department.

(d) The department shall keep an information file about each complaint filed with the department relating to:

(1) a license holder or entity regulated by the department; or

(2) a service delivered by the department.

(e) If a written complaint is filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Sec. 40.005. CONFIDENTIALITY OF INFORMATION. (a) The department shall establish and enforce rules governing the custody, use, and preservation of the department's records, papers, files, and communications.

(b) The department shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of the department's programs and must comply with applicable state and federal law and department rules.

(c) Notwithstanding any other provision of law, the department by rule may prescribe a process by which an administrative law judge may disclose requested confidential information that the department possesses. The rules must provide that the information may be disclosed by the administrative law judge only if the administrative law judge:

(1) provides notice to the department and any interested party; and

(2) determines after an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual.

(d) Except as otherwise provided, a person who is authorized to receive confidential information shall maintain its confidentiality and shall prevent

disclosure of the information to a person who is not authorized to receive the information.

(e) A person commits an offense if the person discloses without authorization confidential information contained in the department's records, papers, files, or communications. An offense under this subsection is a Class A misdemeanor.

Sec. 40.006. APPLICATION OF OTHER LAWS. The department is subject to Chapters 551, 2001, and 2002, Government Code.

[Sections 40.007-40.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 40.021. BOARD OF PROTECTIVE AND REGULATORY SERVICES. (a) The board is composed of six members appointed by the governor with the advice and consent of the senate. The governor shall annually designate one member to be the presiding officer.

(b) Four members of the board must have a demonstrated interest in the services provided by the department, and two members must represent the public.

(c) The board shall be appointed without regard to race, color, disability, sex, religion, age, or national origin.

Sec. 40.022. RESTRICTIONS ON BOARD APPOINTMENT OR MEMBERSHIP. (a) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is a person who is employed by or participates in the management of a business entity or other organization regulated by the department or receiving a substantial amount of money from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that is regulated by the department or that receives money from the department;

(3) uses or receives a substantial amount of tangible goods, services, or money from the department, other than compensation or reimbursement authorized by law for expenses incurred as a board member, or as a client or a parent or guardian of a client receiving services from the department; or

(4) is an employee, officer, or paid consultant of a trade association in a field under the jurisdiction of the department.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation in or for a profession related to the operation of the department may not serve as a member of the board.

Sec. 40.023. REMOVAL FROM BOARD. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment a qualification for appointment required by Section 40.021 or 40.022;

(2) does not maintain during the member's term a qualification for appointment required by Section 40.021 or 40.022;

(3) violates a prohibition established by Section 40.022;

(4) is unable to discharge the member's duties for a substantial part of the term for which the member was appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled meetings of the board that the member is eligible to attend during each calendar year or is absent from more than two consecutive regularly scheduled meetings that the member is eligible to attend, except when the absence is excused by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the presiding officer of the board has knowledge that a potential ground for removal of a board member exists, the presiding officer shall notify the governor and the executive director. If the executive director has knowledge that a potential ground for removal of a board member exists, the executive director shall notify the presiding officer.

Sec. 40.024. BOARD TERMS. Members of the board serve six-year terms, with the terms of two members expiring February 1 of each odd-numbered year.

Sec. 40.025. BOARD PER DIEM. While performing their duties, board members are entitled to a per diem as prescribed by the General Appropriations Act.

Sec. 40.026. BOARD MEETINGS; QUORUM. (a) The board shall meet at least quarterly and at the call of the presiding officer.

(b) Four members of the board constitute a quorum.

Sec. 40.027. EXECUTIVE DIRECTOR. (a) The board shall employ the executive director with the approval of the governor. The executive director serves at the pleasure of the board.

(b) The executive director is the executive head of the department. The executive director shall perform the duties assigned by the board and state law.

Sec. 40.028. GENERAL DUTIES OF BOARD; DELEGATION. (a) The board shall govern the department.

(b) The board shall:

(1) supervise the executive director's administration and enforcement of the laws of this state that impose duties on the department or board; and

(2) develop and implement policies that clearly separate the respective responsibilities of the board and the staff of the department.

(c) The board may delegate to the executive director, or to the person acting as executive director in the executive director's absence, any power or duty imposed on the board or department by law, including the authority to make final orders or decisions, except that the board may not delegate the power or duty to adopt rules. The delegation of a power or duty must be in writing.

Sec. 40.029. RULES. The board shall propose and adopt rules to:

(1) ensure the department's compliance with state and federal law; and

(2) facilitate the implementation of departmental programs.

Sec. 40.030. ADVISORY COMMITTEES. The board may appoint advisory committees in accordance with Article 6252-33, Revised Statutes.

Sec. 40.031. DIVISIONS OF DEPARTMENT. (a) The board may establish divisions within the department as necessary for efficient administration and for the discharge of the department's functions.

(b) The board may allocate and reallocate functions, programs, and activities among the department's divisions.

Sec. 40.032. PERSONNEL. (a) The executive director may employ personnel necessary to administer the department's duties.

(b) The executive director or the executive director's designated representative shall develop an intradepartmental career ladder program, one part of which shall require the intradepartmental posting of all non-entry-level positions concurrently with any public posting.

(c) The executive director or the executive director's designated representative shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The executive director shall provide to the department's employees as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state employees.

(e) The executive director or the executive director's designated representative shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the department's workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the department's workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underuse in the department's workforce of all persons for whom federal or state guidelines encourage a more equitable balance.

(f) The policy statement required under Subsection (e) shall be filed with the governor's office, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 40.033. MERIT SYSTEM. (a) The department may establish a merit system for its employees.

(b) The merit system may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

Sec. 40.034. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES. (a) For one year after the date on which a former officer or employee of the department terminates service or employment with the department, the individual may not, directly or indirectly, attempt or aid in the attempt to procure a contract with the department that relates to a program or service in which the individual was directly concerned or for which the individual had administrative responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act

for step 1, salary group 17, of the position classification salary schedule, including a state employee who is exempt from the state's position classification plan; or

(2) a former officer or employee who is employed by another state agency or a community center.

(c) A former officer or employee of the department commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

[Sections 40.035-40.050 reserved for expansion]

SUBCHAPTER C. GENERAL FUNCTIONS OF DEPARTMENT

Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. The department shall develop a departmental strategic plan based on the goals and priorities stated in the commission's coordinated strategic plan for health and human services.

Sec. 40.052. DUTIES RELATING TO DELIVERY OF SERVICES. The department shall:

(1) propose and implement service delivery standards for departmental programs;

(2) provide training and technical assistance to regional and local service providers;

(3) develop and implement systems for monitoring departmental program performance and service delivery;

(4) promote innovative service delivery at the local level; and

(5) cooperate and coordinate as appropriate with other governmental entities in the delivery of services.

Sec. 40.053. DUTY TO PERFORM OTHER FUNCTIONS. The department shall perform other functions as required by law.

Sec. 40.054. ACCESS TO CRIMINAL HISTORY. Subject to the availability of funds appropriated by the legislature, the department is entitled to obtain any criminal history information from records maintained by:

(1) the Department of Public Safety, as prescribed by Section 411.114, Government Code;

(2) another law enforcement agency in this state, subject to the same procedures and limitations prescribed by Section 411.114, Government Code, as applicable; or

(3) federal agencies, as provided by federal law.

Sec. 40.055. LEGISLATIVE APPROPRIATION REQUEST. The department shall submit any legislative appropriation request to the commission for comment and for incorporation into the commission's consolidated health and human services budget recommendation. The legislative appropriation request must comply with state priorities and federal requirements.

Sec. 40.056. USE OF FUNDS. (a) Notwithstanding any other provision of law, the department may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the department determines that the extension of scope is feasible and within the limits of appropriated funds.

(b) The department may accept, spend, and transfer federal and state funds appropriated for programs authorized by federal law. The department may

accept, spend, and transfer funds received from any source, including a county, municipality, or public or private agency.

Sec. 40.057. GIFTS AND GRANTS. The department may accept a gift or grant from a public or private source to perform any of the department's powers or duties.

Sec. 40.058. CONTRACTS AND AGREEMENTS. (a) The department may enter into contracts or agreements with any person, including a federal, state, or other public or private agency, as necessary to perform any of the department's powers or duties.

(b) An agreement made under this section is not subject to Chapter 771, Government Code.

Sec. 40.059. FEES. The department may set and charge appropriate fees in the administration and delivery of services.

Sec. 40.060. INDEMNIFICATION FOR LEGAL EXPENSES. If a present or former employee of the department who is or was involved in activities relating to the protection of children or elderly or disabled persons is criminally prosecuted for conduct involving the person's misfeasance or nonfeasance in the course and scope of the person's employment and is found not guilty after a trial or appeal or if the complaint or indictment is dismissed without a plea of guilty or nolo contendere being entered, the department may indemnify the person or the person's estate for the reasonable attorney's fees incurred in defense of the prosecution up to a maximum of \$10,000.

Sec. 40.061. IMMUNITY. (a) A department employee or an authorized department volunteer who performs a departmental duty or responsibility is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

(b) In this section, "volunteer" means a person who:

(1) renders services for or on behalf of the department under the supervision of a department employee; and

(2) does not receive compensation that exceeds the authorized expenses the person incurs in rendering those services.

Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The department is not required to pay any cost or fee otherwise imposed for court proceedings, including a:

(1) filing fee or fee for issuance or service of process imposed by Section 14.13, Family Code, or by Section 51.317, 51.318(b)(2), or 51.319, Government Code;

(2) transfer fee imposed by Section 11.06(l) or 14.13, Family Code;

(3) court reporter fee imposed by Section 51.601, Government Code;

(4) judicial fund fee imposed by Sections 51.701 and 51.702, Government Code;

(5) judge's fee imposed by Section 25.0008, 25.00263, or 25.0029, Government Code; or

(6) cost or security fee imposed by Section 12 or 622, Probate Code.

Sec. 40.063. EXCEPTIONS FROM CERTAIN PROVISIONS OF ADMINISTRATIVE PROCEDURE ACT. Section 2001.038 and Subchapters C through H, Chapter 2001, Government Code, do not apply to the granting,

payment, denial, or withdrawal of financial or medical assistance or benefits under a service program of the department.

Sec. 40.064. INTERAGENCY COOPERATION AND EXCHANGE OF INFORMATION. (a) The department may execute a memorandum of understanding with another state agency to facilitate the implementation of a program or the delivery of a service that the department is required by law to implement or deliver.

(b) The department may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department or the agency or entity to properly execute its respective duties and responsibilities. An exchange of information does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

Sec. 40.065. COMMUNICATIONS OFFICER; PLAN. (a) The department shall designate one or more department employees to be primarily responsible for communicating with the public regarding the department's powers and duties. Through the use of designated employees, the department shall ensure:

(1) effective communications between the department and persons seeking to report abuse or neglect or inquiring about the status of a case; and

(2) effective and timely response to questions from the public within the department's confidentiality guidelines.

(b) The department shall develop and implement a communication plan to ensure statewide public and government awareness of child abuse or neglect investigated by the department. The plan shall include information detailing the procedure followed by the department during the investigation and the responsibilities of the department in child abuse cases. In implementing the plan, the department shall establish a process for expediting the reporting of child abuse or neglect to the department. The department shall adopt rules to implement this subsection.

SECTION 2. The heading of Title 2, Human Resources Code, is amended to read as follows:

TITLE 2. DEPARTMENT OF HUMAN SERVICES AND DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

SECTION 3. The heading of Subtitle B, Title 2, Human Resources Code, is amended to read as follows:

SUBTITLE B. STRUCTURE AND FUNCTIONS OF DEPARTMENT OF HUMAN SERVICES

SECTION 4. The headings of Chapters 21 and 22, Human Resources Code, are amended to read as follows:

CHAPTER 21. ADMINISTRATIVE PROVISIONS FOR DEPARTMENT OF HUMAN SERVICES

CHAPTER 22. GENERAL FUNCTIONS OF DEPARTMENT OF HUMAN SERVICES

SECTION 5. Section 21.002, Human Resources Code, is amended to read as follows:

Sec. 21.002. SUNSET PROVISION. The Texas Department of Human Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is

abolished and this title expires September 1, 1999, except that Chapter 40 expires as provided by Section 40.003.

SECTION 6. Section 11.001, Human Resources Code, is amended to read as follows:

Sec. 11.001. DEFINITIONS. Except as provided by Section 34.002 or 40.001, in [H] this title:

- (1) "Board" means the Texas Board of Human Services.
- (2) "Department" means the Texas Department of Human Services.
- (3) "Commissioner" means the Commissioner of Human Services.
- (4) "Assistance" means all forms of assistance and services for needy persons authorized by Subtitle C ~~[of this title]~~.
- (5) "Financial assistance" means money payments for needy persons authorized by Chapter 31 ~~[of this code]~~.
- (6) "Medical assistance" means assistance for needy persons authorized by Chapter 32 ~~[of this code]~~.

SECTION 7. Section 411.114, Government Code, is amended to read as follows:

Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. (a)(1) In this subsection the terms "child," "child-care facility," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(2) The Department of Protective and Regulatory Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, or certification under Chapter 42, Human Resources Code;

(B) an owner or employee of or an applicant for employment by a child-care facility licensed, registered, or certified under that chapter;

(C) a resident of a registered family home, but not a child in the home's care or a parent of the child;

(D) an applicant for a position with the Department of Protective and Regulatory Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(F) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(G) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Protective and Regulatory Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability ~~[an employee of a business entity that provides in-home respite care of children with temporary illnesses];~~

(H) a volunteer or applicant volunteer with the Department of Protective and Regulatory Services ~~[an employee of a home health agency];~~

(I) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(J) a person providing or applying to provide adoptive or foster care for children in the care of the Department of Protective and Regulatory Services and other adults living with that person in the residence in which the child will reside;

(K) a Department of Protective and Regulatory Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability [~~on the date the department implements this section~~];

(L) a person who is the subject of a report the department receives alleging that the person has abused or neglected a child, an elderly person, or a person with a disability, provided that report has proven to have merit [~~after investigation~~]; [~~or~~]

(M) a relative providing or applying to provide in-home care for a child in the care of the Department of Protective and Regulatory Services and other adults living with that relative in the residence in which the child will reside;

(N) a person providing child care for a child who is in the care of the Department of Protective and Regulatory Services and who is or will be receiving adoptive, foster, or in-home care;

(O) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected; or

(P) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America.

(3) The Department of Protective and Regulatory Services may not use the authority granted under this section to harass an employee or volunteer. The Board of Protective and Regulatory Services shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records [~~is entitled, under this subsection, only to criminal history record information that relates to:~~

~~[(A) an offense classified as an offense against the person or the family;~~

~~[(B) an offense classified as public indecency; or~~

~~[(C) a felony violation of a statute intended to control the possession or distribution of a substance included in Chapter 481, Health and Safety Code].~~

(4) Criminal history record information obtained by the Department of Protective and Regulatory Services under this subsection may not be released to any person except:

(A) on court order;

(B) [-] with the consent of the person who is the subject of the criminal history record information;

(C) for purposes of an administrative hearing held by the Department of Protective and Regulatory Services concerning the person who is the subject of the criminal history record information; [-] or

(D) as provided by Subdivision (5).

(5) The Department of Protective and Regulatory Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) ~~[or to]~~ a child-care facility that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subsection (a)(2)(G) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; or

(D) an adult residing with a child and the person who is the subject of the criminal history record information, if the Department of Protective and Regulatory Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the child or adult.

(b) The Department of Protective and Regulatory Services may charge an organization that requests criminal history record information under Subsection (a)(2) a fee in an amount necessary to cover the costs of obtaining the information on the organization's behalf ~~[(1) In this subsection, "facility" has the meaning assigned by Section 106.001, Human Resources Code.~~

~~[(2) The Department of Protective and Regulatory Services, on behalf of the Texas Department of Health, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:~~

~~[(A) an applicant for employment at a facility; or~~

~~[(B) an employee of a facility.~~

~~[(3) The Department of Protective and Regulatory Services is entitled to obtain, under this subsection, only criminal history record information that relates to:~~

~~[(A) an offense classified as an offense against the person or the family;~~

~~[(B) an offense classified as public indecency;~~

~~[(C) a felony violation of a statute intended to control the possession or distribution of a substance included in Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code;~~

~~[(D) a felony offense under Section 31.03, Penal Code; or~~

~~[(E) an offense under Section 29.02, 29.03, or 30.02, Penal Code.~~

~~[(4) Criminal history record information obtained by the Department of Protective and Regulatory Services under this subsection may not be released to any person except on court order, with the written consent of the person who is the subject of the criminal history record information, or as provided by Subdivision (5).~~

~~[(5) The Department of Protective and Regulatory Services is not prohibited from disclosing criminal history record information obtained under this subsection to the Texas Department of Health or to the facility for which the Department of Protective and Regulatory Services requested the information].~~

SECTION 8. Subchapter A, Chapter 47, Human Resources Code, is amended by adding Section 47.006 to read as follows:

Sec. 47.006. ADVISORY COMMITTEE ON PROMOTING ADOPTION OF MINORITY CHILDREN. (a) An advisory committee on promoting the adoption of and provision of services to minority children is established within the department.

(b) The committee is composed of 12 members appointed by the board of the Department of Protective and Regulatory Services. The board shall appoint to the committee individuals who in the aggregate have knowledge of and experience in community education, cultural relations, family support, counseling, and parenting skills and education. At least six members must be ordained members of the clergy.

(c) A committee member serves for a two-year term and may be appointed for additional terms.

(d) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(e) The committee shall elect one member to serve as presiding officer. The presiding officer serves for a two-year term and may be elected for additional terms.

(f) The department shall set the time and place of the first committee meeting. The committee shall meet at least quarterly.

(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.

(h) To promote the adoption of and provision of services to minority children, the committee shall:

(1) study, develop, and evaluate programs and projects relating to community awareness and education, family support, counseling, parenting skills and education, and reform of the child welfare system;

(2) consult with churches and other cultural and civic organizations;
and

(3) report to the department at least annually the committee's recommendations for department programs and projects that will promote the adoption of and provision of services to minority children.

(i) On receiving the committee's recommendations, the department may adopt rules to implement a program or project recommended under this section. The department may solicit, accept, and use gifts and donations to implement a program or project recommended by the committee.

(j) The department shall report to the legislature not later than November 1 of each even-numbered year following the first year in which it receives recommendations under this section regarding committee recommendations and action taken by the department under this section.

(k) The recruitment of minority families may not be a reason to delay placement of a child with an available family of a race or ethnicity different from that of the child.

SECTION 9. Section 42.022, Human Resources Code, is amended by amending Subsections (b) and (c) and by adding Subsection (h) to read as follows:

(b) Members of the committee serve for terms of two years expiring on February 1 of each odd-numbered year.

(c) The ~~[board shall appoint the]~~ advisory committee is composed of 12 members appointed by the board. The members must have the following qualifications ~~[to provide for balanced representation for]:~~

(1) two must be parents, guardians, or custodians of children who use the facilities;

(2) two must be representatives of child advocacy groups;

(3) two must be operators of nonprofit child-care ~~[the]~~ facilities that are licensed under this chapter;

(4) two must be experts in various professional fields that are relevant to child care and development; ~~[and]~~

(5) two must be members of the general public; and

(6) two must be operators of proprietary child-care facilities that are licensed under this chapter.

(h) In making appointments to the committee, the board shall consider whether the committee reflects the race, ethnicity, and age of the residents of this state and whether the committee provides representation of the geographic regions of the state.

SECTION 10. Section 42.042, Human Resources Code, is amended by amending Subsection (e) and by adding Subsections (m), (n), and (o) to read as follows:

(e) The department shall promulgate minimum standards that apply to licensed ~~[for]~~ child-care facilities covered by this chapter and that will:

(1) promote the health, safety, and welfare of children attending a facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities; and

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs.

(m) The department shall ensure that each child-care facility that provides care for less than 24 hours a day complies with the appropriate minimum standards relating to staff-child ratios, group sizes, and square footage as those minimum standards existed on September 1, 1985. The department may not enforce new standards in relation to staff-child ratios, group sizes, or square footage that are more stringent than the 1985 standards for those facilities. This subsection expires September 1, 1997.

(n) In determining minimum standards for child-care facilities that provide care for less than 24 hours a day, the department shall, within available appropriations, conduct a comprehensive cost-benefit analysis and economic impact study that includes families and licensed child-care providers.

(o) Not later than the 60th day before the date the board adopts a revision to the minimum standards for child-care facilities, the department shall present

the revision to the appropriate legislative oversight committees that have jurisdiction over child-care facilities for review and comment.

SECTION 11. (a) The terms of the current members of the State Advisory Committee on Child-Care Administrators and Facilities expire on the date on which a majority of the new members have been appointed.

(b) On September 1, 1995, or as soon as possible after that date, the Board of Protective and Regulatory Services shall appoint new members to the advisory committee to accomplish the membership plan for the advisory committee established by Subsection (c), Section 42.022, Human Resources Code, as amended by this Act, for terms expiring February 1, 1997.

(c) The changes in law made by this Act to the qualifications of the members of the advisory committee apply only to members appointed on or after the effective date of this Act.

SECTION 12. The Department of Protective and Regulatory Services shall contract with a public or private entity to conduct an independent comprehensive cost-benefit analysis and economic impact study relating to staff-child ratios, group sizes, and square footage requirements that are contained in any minimum standards for child-care facilities that the Board of Protective and Regulatory Services adopted in 1994. The Department of Protective and Regulatory Services shall submit the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the 75th Legislature not later than December 1, 1996.

SECTION 13. Sections 22.006 and 22.0065, Human Resources Code, are repealed.

SECTION 14. The following are repealed:

- (1) Section 21.017, Human Resources Code; and
- (2) Article 4413(503), Revised Statutes.

SECTION 15. In addition to the new changes in law made by this Act relating to the powers and duties of the Department of Protective and Regulatory Services, this Act conforms certain provisions of the Human Resources Code relating to that subject to codify Article 4413(503), Revised Statutes, and Section 1.17(b), Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991.

SECTION 16. This Act takes effect September 1, 1995.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Hilderbran moved to adopt the conference committee report on **HB 1662**.

The motion prevailed.

HB 2843 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative R. Lewis submitted the following conference committee report on **HB 2843**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2843** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Moncrief

R. Lewis

Ratliff

Corte

Bivins

Counts

Sims

Saunders

Lucio

Yost

On the part of the Senate

On the part of the House

HB 2843, A bill to be entitled An Act relating to the adoption of rules by the Texas Natural Resource Conservation Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.103, Water Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) The commission may not adopt a new rule or amend an existing rule under Subsection (a) that as adopted or amended will be more stringent than federal regulation of the same matter unless:

(1) there is no applicable federal regulation;

(2) the more stringent rule or amendment is necessary to address an environmental condition unique to this state; or

(3) the applicable federal regulation is substantially inadequate to provide necessary protection for the environment of this state.

(e) If the commission proposes to adopt a new rule or amend an existing rule that will be more stringent than a federal regulation that governs the same matter, the commission must publish with the proposed rule or amendment as required by Chapter 2001, Government Code, a detailed statement of the grounds for the commission's determination that the more stringent state rule is necessary, appropriate, and authorized under Subsection (d) and a cost-benefit analysis of the proposed rule. The cost-benefit analysis must describe costs expected to be imposed on state or local governments or the regulated community in complying with the proposed rule and the benefits, including beneficial environmental impacts, anticipated from adoption of the proposed rule. The cost-benefit analysis must also include, if applicable, reasonable alternative methods that were considered by the agency and the reasons for rejecting those alternatives in favor of the proposed rule, including a brief summary of the relative costs and benefits of such alternatives.

(f) The commission may not adopt any rule pertaining to a water system that serves 50 or fewer connections except to comply with federal requirements or to protect the public health.

SECTION 2. Sections 361.428(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The commission shall adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that produce

compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial reuse of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards which are no more stringent than the pollutant limits established by the Environmental Protection Agency in 40 CFR Part 503 and a definition of beneficial reuse. ~~[The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards.]~~ Beneficial reuse does not include landfilling or the use of compost as daily landfill cover.

(c) The commission may not require a [A] composting facility which accepts ~~[may not accept]~~ mixed municipal solid waste from a governmental unit for composting purposes to provide ~~[at that facility unless]~~ residents with ~~[have]~~ reasonable access to household hazardous waste collection and source-separated recycling programs ~~[in the area. The commission shall establish standards for household hazardous waste collection programs and source-separated recycling programs that qualify under this section].~~

SECTION 3. (a) Not later than the 180th day after the effective date of this Act, the Texas Natural Resource Conservation Commission by rule shall adopt an order that:

(1) lists the commission rules in effect on September 1, 1995, that the commission has determined:

(A) are more stringent than federal regulation of the same matters; and

(B) meet an exception under Section 5.103(d), Water Code, as added by this Act; and

(2) includes for each rule listed the detailed statement described by Section 5.103(e), Water Code, as added by this Act.

(b) Sections 2001.024(4) and (5), Government Code, do not apply to notice for the rule required to be adopted by Subsection (a) of this section.

(c) A commission rule that is in effect on September 1, 1995, is more stringent than federal regulation of the same matter, and is not listed in the order required by Subsection (a) of this section expires on the date the final rule adopting the order takes effect.

SECTION 4. This Act takes effect September 1, 1995.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative R. Lewis moved to adopt the conference committee report on **HB 2843**.

A record vote was requested.

The motion prevailed by (Record 593): 115 Yeas, 25 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Black; Brady; Brimer; Carter; Chisum; Clemons; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Elkins; Farrar; Finnell; Gallego; Glaze; Goodman; Goolsby; Gray; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Junell; Kamel; King; Krusee; Kuempel; Lewis, R.; Longoria; Madden; Marchant; McCall; McCoulskey; Moffat; Moreno; Mowery; Munoz; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rusling; Sadler; Saunders; Seidlits; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Tillery; Torres; Uher; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yost; Zbranek.

Nays — Bosse; Coleman; Conley; Davila; Davis; Edwards; Ehrhardt; Eiland; Giddings; Greenberg; Hirschi; Hochberg; Kubiak; Lewis, G.; Luna; Maxey; McDonald; Naishtat; Rodriguez; Romo; Serna; Thompson; Turner, S.; Van de Putte; Yarbrough.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Alonzo; Berlanga; Carona; Dukes; Hudson; Jones, J.; Price; Turner, B.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 593. I intended to vote no.

Danburg

When Record No. 593 was taken, I was in the house but away from my desk. I would have voted yes.

Berlanga

SB 913 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Naishtat submitted the conference committee report on **SB 913**.

Representative Naishtat moved to adopt the conference committee report on **SB 913**.

A record vote was requested.

The motion prevailed by (Record 594): 138 Yeas, 3 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze;

Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgenuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Nays — Hartnett; Patterson; Talton.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wilson.

Absent — Alvarado; Carona; Danburg; Hudson; Lewis, R.; Moffat; Price.

SB 1546 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Counts submitted the conference committee report on **SB 1546**.

Representative Counts moved to adopt the conference committee report on **SB 1546**.

The motion prevailed. (Bosse and Puente recorded voting no)

(Wolens in the chair)

SB 1646 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Coleman submitted the conference committee report on **SB 1646**.

Representative Coleman moved to adopt the conference committee report on **SB 1646**.

A record vote was requested.

The motion prevailed by (Record 595): 141 Yeas, 1 Nay, 3 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden;

Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Woolley; Yarbrough; Yost; Zbranek.

Nay — Carter.

Present, not voting — Mr. Speaker; Hartnett; Wolens(C).

Absent, Excused — Wilson.

Absent — Carona; Hudson; Marchant; Price.

HB 52 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McCall submitted the following conference committee report on **HB 52**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 52** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro	McCall
Haywood	Hamric
West	Madden
Ratliff	Brady
	Park

On the part of the Senate

On the part of the House

HB 52, A bill to be entitled An Act relating to the authority of state and local governments to make purchases and contracts and to engage in certain projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 252.022(a), Local Government Code, is amended to read as follows:

(a) This chapter does not apply to an expenditure for:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal or professional services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) electricity, gas, water, and other utility services;

(D) captive replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a purchase of rare books, papers, and other library materials for a public library;

(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; ~~or~~

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or

(D) under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391; or [and]

(13) services performed by blind or severely disabled persons.

SECTION 2. Section 252.048(c), Local Government Code, is amended to read as follows:

(c) If a change order involves a decrease or an increase of \$25,000 [~~\$15,000~~] or less, the governing body may grant general authority to an administrative official of the municipality to approve the change orders.

SECTION 3. Section 262.030, Local Government Code, is amended to read as follows:

Sec. 262.030. ALTERNATIVE COMPETITIVE PROPOSAL PROCEDURE FOR INSURANCE, [OR] HIGH TECHNOLOGY ITEMS, AND

SPECIAL SERVICES. (a) The competitive proposal procedure provided by this section may be used for the purchase of insurance, ~~or~~ high technology items, and the following special services:

(1) landscape maintenance;

(2) travel management; or

(3) recycling.

(b) Quotations must be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure. The request for proposals must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

(c) ~~(b)~~ If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

(d) ~~(c)~~ As provided in the request for proposals and under rules adopted by the commissioners court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

SECTION 4. Section 262.031(b), Local Government Code, is amended to read as follows:

(b) If a change order involves an increase or decrease in cost of \$50,000 ~~[\$15,000]~~ or less, the commissioners court may grant general authority to an employee to approve the change orders. However, the original contract price may not be increased by more than 25 percent unless the change order is necessary to comply with a federal or state statute, rule, regulation, or judicial decision enacted, adopted, or rendered after the contract was made. The original contract price may not be decreased by 18 percent or more without the consent of the contractor.

SECTION 5. Section 263.152(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county may:

(1) periodically sell the county's surplus or salvage property by competitive bid or auction, except that competitive bidding or an auction is not necessary if the purchaser is another county;

(2) offer the property as a trade-in for new property of the same general type if the commissioners court considers that action to be in the best interests of the county; or

(3) order any of the property to be destroyed or otherwise disposed of as worthless if the commissioners court undertakes to sell that property under Subdivision (1) and is unable to do so because no bids are made.

SECTION 6. Section 271.083(a), Local Government Code, is amended to read as follows:

(a) A local government may participate in the purchasing program of the commission by filing with the commission a resolution adopted by the governing body of the local government requesting that the local government be allowed to participate on a voluntary basis, and to the extent the commission deems feasible, and stating that the local government will:

(1) designate an official to act for the local government in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the governing body will direct the decisions of the representative;

(2) be responsible for:

(A) submitting requisitions to the commission under any contract; or

(B) electronically sending purchase orders directly to vendors and electronically sending to the commission reports on actual purchases made under this paragraph that provide the information and are sent at the times required by the commission;

(3) be responsible [and] for making payment directly to the vendor; and

(4) [(3)] be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

SECTION 7. Chapter 271, Local Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. COOPERATIVE PURCHASING PROGRAM

Sec. 271.101. DEFINITIONS. In this subchapter:

(1) "Local cooperative organization" means an organization of governments established to provide local governments access to contracts with vendors for the purchase of materials, supplies, services, or equipment.

(2) "Local government" means a county, municipality, special district, school district, junior college district, regional planning commission, or other political subdivision of the state.

Sec. 271.102. COOPERATIVE PURCHASING PROGRAM PARTICIPATION. (a) A local government may participate in a cooperative purchasing program with another local government or a local cooperative organization.

(b) A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative organization stating that the signing local government will:

(1) designate a person to act under the direction of, and on behalf of, that local government in all matters relating to the program;

(2) make payments to another participating local government or a local cooperative organization or directly to a vendor under a contract made under this subchapter, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and

(3) be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the

agreement between the participating local governments or between a local government and a local cooperative organization.

(c) A local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

SECTION 8. Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.904 to read as follows:

Sec. 271.904. INDEMNIFICATION. (a) Except as provided by Subsection (b), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a registered engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the governmental agency against liability for damage that:

(1) is caused by or results from the negligence of the governmental agency or its agent or employee; and

(2) arises from:

(A) personal injury or death;

(B) property injury; or

(C) any other expense that arises from personal injury, death, or property injury.

(b) A covenant under which a registered engineer or registered architect agrees to indemnify or hold harmless a governmental agency or its agent or employees against liability arising from the personal injury or death of the architect or engineer or the employees of the architect or engineer is enforceable.

(c) In this section, "governmental agency" has the meaning assigned by Section 271.003.

SECTION 9. Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. PUBLIC WORK. (a) It is unlawful for this State or for any of its political subdivisions, including any county, city, or town, to engage in the construction of any public work involving professional engineering, where public health, public welfare or public safety is involved, unless the engineering plans and specifications and estimates have been prepared by, and the engineering construction is to be executed under the direct supervision of a registered professional engineer. ~~[However nothing in this Act shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed Eight Thousand (\$8,000.00) Dollars.]~~

(b) This Act shall not apply to:

(1) a public work that involves structural, electrical, or mechanical engineering and for which the contemplated expenditure for the completed project does not exceed \$8,000;

(2) a public work that does not involve structural, electrical, or mechanical engineering and for which the contemplated expenditure for the completed project does not exceed \$20,000; and

(3) [any] road maintenance or betterment work undertaken by the commissioners court of a county [the County Commissioners' Court].

SECTION 10. Chapter 122, Human Resources Code, is amended by adding Section 122.020 to read as follows:

Sec. 122.020. APPLICATION OF OTHER LAW. Chapters 252, 262, and 271, Local Government Code, do not supersede this chapter.

SECTION 11. Section 1.03(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission shall certify businesses that are historically underutilized businesses. As part of its certification procedures, the commission may approve another certification ~~[a municipal]~~ program that certifies historically underutilized businesses under substantially the same definition prescribed by Section 1.02(3) of this Act, and municipalities may adopt the certification program of the commission, the federal Small Business Administration, a political subdivision, or another governmental entity ~~[certify businesses certified by the municipality as historically underutilized businesses under this Act].~~

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative McCall moved to adopt the conference committee report on **HB 52**.

The motion prevailed.

HB 982 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McDonald submitted the following conference committee report on **HB 982**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 982** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro
Sibley
Nixon
Nelson

McDonald
Coleman
Harris
S. Turner
Junell

On the part of the Senate

On the part of the House

HB 982, A bill to be entitled An Act relating to the children's trust fund and the Children's Trust Fund of Texas Council operating fund; making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 74.003, Human Resources Code, is amended to read as follows:

Sec. 74.003. POWERS AND DUTIES. (a) The council shall:

(1) develop a state plan for expending funds for child abuse and neglect prevention programs that includes an annual [a] schedule of transfers of trust fund money to the operating fund [~~through 1996 to assure that there is no decline in the amount of grant money available in 1997~~];

(2) develop eligibility criteria for applicants for grants to fund child abuse and neglect prevention programs;

(3) establish grant application procedures;

(4) establish funding priorities for child abuse and neglect prevention programs;

(5) establish guidelines relating to grant amounts;

(6) establish guidelines to ensure fair distribution of grants between rural and urban areas of the state;

(7) develop procedures for evaluating grant applications;

(8) review grant proposals submitted to the council and approve or deny those grants;

(9) monitor the expenditure of funds for child abuse and neglect prevention programs;

(10) submit an annual report to the governor and the legislature; and

(11) adopt rules and employ necessary staff to implement this chapter.

(b) The council may:

(1) apply for and receive funds made available by the federal or state government or by another public or private source, which funds may be designated and expended for administrative purposes and [or] for grants for child abuse and neglect prevention programs, and which may be deposited in either the trust fund or the operating fund, as appropriate; and

(2) solicit donations for child abuse prevention programs.

SECTION 2. Section 74.005, Human Resources Code, is amended to read as follows:

Sec. 74.005. ADMINISTRATIVE AND OTHER COSTS.

(a) Administrative costs during any fiscal year may not exceed an amount equal to 50 percent of the interest credited to [~~10 percent of the maximum amount of funds the council may transfer from~~] the trust fund during the preceding [a] fiscal year [~~under Section 74.006(c) or under Section 74.007(b)~~].

(b) Funds expended under a special project grant from a nongovernmental source or a governmental source [~~designated~~] for public education or public awareness may not be counted as administrative costs for the purposes of this section.

SECTION 3. Section 74.006, Human Resources Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The council may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year the council may not transfer more than the amount deposited to the credit of the fund from any source, including interest and the amount credited under Section 118.022, Local

Government Code, during the preceding ~~[more than 50 percent of the money that was contained in the trust fund on the first day of that]~~ fiscal year. Money ~~[The money]~~ transferred to the operating fund that was originally deposited to the credit of the trust fund under Section 118.022, Local Government Code, ~~[under this subsection]~~ may be used only for child abuse and neglect prevention programs. The council may also transfer funds contained in the operating fund to the trust fund at any time. ~~[This subsection expires August 31, 1996.]~~

(d) Interest earned on money in the trust fund shall be deposited to the credit of the trust fund.

SECTION 4. Section 74.007(b), Human Resources Code, is amended to read as follows:

(b) ~~[Beginning September 1, 1996, any interest earned on funds deposited in the trust fund shall be deposited in the operating fund.]~~ Administrative and ~~other~~ costs allowed in Section 74.005 shall be taken from the operating fund. ~~[Any interest earned before September 1, 1996, shall remain in the trust fund.]~~ The council may also transfer funds contained in the operating fund to the trust fund at any time.

SECTION 5. Section 74.010(b), Human Resources Code, is amended to read as follows:

(b) The council shall award grants that continue for one year. The council may renew a grant not more than two times unless certain circumstances as determined by the council require an extension of the period.

SECTION 6. If H.B. No. 3050 is enacted by the 74th Legislature at its regular session and becomes law, in addition to other amounts appropriated for the fiscal biennium ending August 31, 1997, there is hereby appropriated to the Children's Trust Fund of Texas Council for the purpose of implementing this Act the receipts to the Children's Trust Fund of Texas Council Operating Fund No. 541, not to exceed \$750,000 in the fiscal year ending August 31, 1996, and not to exceed \$750,000 in the fiscal year ending August 31, 1997. The council is limited to a total number of full-time-equivalent positions not to exceed seven in the fiscal year ending August 31, 1996, and seven in the fiscal year ending August 31, 1997.

SECTION 7. This Act takes effect September 1, 1995.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Representative McDonald moved to adopt the conference committee report on **HB 982**.

The motion prevailed.

The chair stated that **HB 982** was passed subject to the provisions of Article III, Section 49a, of the Texas Constitution.

HB 1419 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Yarbrough submitted the following conference committee report on **HB 1419**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1419** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Cain	Yarbrough
Wentworth	Wilson
Nelson	Kubiak
Armbrister	Torres
On the part of the Senate	On the part of the House

HB 1419, A bill to be entitled An Act relating to certificates and permits issued by the Texas Alcoholic Beverage Commission, the regulation of applicants for and holders of private club permits, and the ability of the commission to receive gifts, grants, or donations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.37, Alcoholic Beverage Code, is amended by adding Subsection (d) to read as follows:

(d) The commission is authorized to receive in the form of a gift, grant, or donation, any funds consistent with the purposes and goals of the commission and the designation of the grantor. However, no gift, grant, or donation may be offered or accepted from any party to any contested case before the agency, or from any party licensed or regulated by the commission.

SECTION 2. Subchapter B, Chapter 11, Alcoholic Beverage Code, is amended by adding Section 11.392 to read as follows:

Sec. 11.392. NOTICE OF PRIVATE CLUB APPLICATION OR RENEWAL. (a) The commission shall give notice of an application for a permit or renewal of a permit issued under Chapter 32 or 33 to:

(1) the state senator and the state representative who represent the district in which the premises are located;

(2) the municipal governing body, if the premises are located in an incorporated area, and the commissioners court of the county in which the premises are located; and

(3) the chief of police of the municipality, if the premises are located in an incorporated area, and the sheriff of the county in which the premises are located.

(b) Notwithstanding Section 11.39(c), the applicant for a private club permit renewal shall publish notice of the renewal application in a newspaper

of general circulation in accordance with the requirements of Sections 11.39(a) and (b).

(c) Notices provided under this section must be given not later than:

(1) the fifth day after the date the application is filed; or

(2) the 31st day before the expiration date of a permit in the case of renewal.

(d) This section does not apply to a fraternal or veterans organization or the holder of a food and beverage certificate.

SECTION 3. Section 11.61(d), Alcoholic Beverage Code, is amended to read as follows:

(d) The commission or administrator without a hearing may for investigative purposes summarily suspend a mixed beverage permit~~[, a private club registration permit,]~~ or a wine and beer retailer's permit for not more than seven days if the commission or administrator finds that a shooting, stabbing, or murder has occurred on the licensed premises which is likely to result in a subsequent act of violence. Notice of the order suspending the permit shall be given to the permittee personally within 24 hours of the time the violent act occurs. If the permittee cannot be located, notice shall be provided by posting a copy of the order on the front door of the licensed premises.

SECTION 4. Subchapter C, Chapter 11, Alcoholic Beverage Code, is amended by adding Sections 11.612 and 11.613 to read as follows:

Sec. 11.612. CANCELLATION OF PRIVATE CLUB PERMIT. (a) The commission or administrator may cancel an original or a renewal permit issued under Chapter 32 or 33 and may refuse to issue any new alcoholic beverage permit for the same premises for one year after the date of cancellation if:

(1) the chief of police of the municipality, if the premises are located in an incorporated area, or the sheriff of the county in which the premises are located has submitted a sworn statement to the commission stating specific allegations that the place or manner in which the permittee conducts its business endangers the general welfare, health, peace, morals, or safety of the community; and

(2) the commission or administrator finds, after notice and hearing within the county where the premises are located, that the place or manner in which the permittee conducts its business does in fact endanger the general welfare, health, peace, morals, or safety of the community.

(b) This section does not apply to a permit issued to a fraternal or veterans organization or the holder of a food and beverage certificate.

Sec. 11.613. SUMMARY SUSPENSION OF PRIVATE CLUB PERMIT. The commission or administrator without a hearing may for investigative purposes summarily suspend a permit issued under Chapter 32 or 33 for not more than seven days if the commission or administrator finds that a shooting, stabbing, or murder has occurred on the licensed premises that is likely to result in a subsequent act of violence. Notice of the order suspending the permit shall be given to the permittee personally within 72 hours of the time the violent act occurs. If the permittee cannot be located, notice shall be provided by posting a copy of the order on the front door of the licensed premises.

SECTION 5. Chapter 25, Alcoholic Beverage Code, is amended by adding Section 25.13 to read as follows:

Sec. 25.13. FOOD AND BEVERAGE CERTIFICATE. (a) A holder of a wine and beer retailer's permit may be issued a food and beverage certificate by the commission if food service is the primary business being operated on the premises by the permittee.

(b) An applicant or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees. The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service as the primary business on the premises for which a food and beverage certificate has been issued.

(c) The fee for a food and beverage certificate shall be set at a level sufficient to recover the cost of issuing the certificate and administering this section.

(d) A certificate issued under this section expires on the expiration of the primary wine and beer retailer's permit. A certificate may be canceled at any time if the commission finds that the holder of the certificate is not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 75 percent of the gross receipts of the premises. The commission may impose a fine not to exceed \$5,000 on the holder of a food and beverage certificate not operating as a food service establishment and may, upon finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section, cancel the permittee's wine and beer retailer's permit.

(e) Except for Section 11.11, the statutory provisions and rules applying to the holder of a wine and beer retailer's permit as of January 1, 1996, and any applicable law enacted by the 74th Legislature, Regular Session, 1995, also apply to the holder of a food and beverage certificate. A statutory provision or rule applicable to a holder of a wine and beer retailer's permit enacted after January 1, 1996, does not apply to a holder of a food and beverage certificate unless the statute or rule specifically refers to its application to a holder of a food and beverage certificate.

SECTION 6. Chapter 28, Alcoholic Beverage Code, is amended by adding Section 28.18 to read as follows:

Sec. 28.18. FOOD AND BEVERAGE CERTIFICATE. (a) A holder of a mixed beverage permit may be issued a food and beverage certificate by the commission if the gross receipts of mixed beverages sold by the holder are 75 percent or less of the total gross receipts from the premises.

(b) An applicant or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees. The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service on the premises for which a food and beverage certificate has been issued.

(c) The fee for a food and beverage certificate shall be set at a level sufficient to recover the cost of issuing the certificate and administering this section.

(d) On receipt of an application for a renewal of a mixed beverage permit by a holder who also holds a food and beverage certificate, the commission shall request certification by the comptroller to determine whether the holder

is in compliance with Subsection (a). In determining compliance with Subsection (a), the comptroller shall compare the permittee's gross receipts tax reports with the permittee's sales tax reports for the premises. If the comptroller does not certify that the holder is in compliance with Subsection (a), the commission may not renew the certificate.

(e) A certificate expires on the expiration of the primary mixed beverage permit. A holder of a mixed beverage permit who is denied renewal of a certificate may not apply for a new certificate until the day after the first anniversary of the determination of the comptroller under Subsection (d).

(f) Except for Section 11.11, the statutory provisions and rules applying to the holder of a mixed beverage permit as of January 1, 1996, and any applicable law enacted by the 74th Legislature, Regular Session, 1995, also apply to the holder of a food and beverage certificate. A statutory provision or rule applicable to a holder of a mixed beverage permit enacted after January 1, 1996, does not apply to a holder of a food and beverage certificate unless the statute or rule specifically refers to its application to a holder of a food and beverage certificate.

SECTION 7. Chapter 32, Alcoholic Beverage Code, is amended by adding Section 32.23 to read as follows:

Sec. 32.23. FOOD AND BEVERAGE CERTIFICATE. (a) A holder of a private club registration permit may be issued a food and beverage certificate by the commission if the gross receipts of mixed beverages served by the holder are 75 percent or less of the total gross receipts from the premises.

(b) An applicant or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees. The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service on the premises for which a food and beverage certificate has been issued.

(c) The fee for a food and beverage certificate shall be set at a level sufficient to recover the cost of issuing the certificate and administering this section.

(d) On receipt of an application for a renewal of a private club registration permit by a holder who also holds a food and beverage certificate, the commission shall request certification by the comptroller to determine whether the holder is in compliance with Subsection (a). In determining compliance with Subsection (a), the comptroller shall compare the permittee's gross receipts tax reports with the permittee's sales tax reports for the premises. If the comptroller does not certify that the holder is in compliance with Subsection (a), the commission may not renew the certificate.

(e) A certificate expires on the expiration of the primary private club registration permit. A holder of a private club registration permit who is denied renewal of a certificate may not apply for a new certificate until the day after the first anniversary of the determination of the comptroller under Subsection (d).

(f) Except for Section 11.11, the statutory provisions and rules applying to the holder of a private club permit as of January 1, 1996, and any applicable law enacted by the 74th Legislature, Regular Session, 1995, also apply to the holder of a food and beverage certificate. A statutory provision or rule

applicable to a holder of a private club permit enacted after January 1, 1996, does not apply to a holder of a food and beverage certificate unless the statute or rule specifically refers to its application to a holder of a food and beverage certificate.

SECTION 8. Chapter 69, Alcoholic Beverage Code, is amended by adding Section 69.16 to read as follows:

Sec. 69.16. FOOD AND BEVERAGE CERTIFICATE. (a) A holder of a retail dealer's on-premise license may be issued a food and beverage certificate by the commission if food service is the primary business being operated on the premises by the permittee.

(b) An applicant or holder of a food and beverage certificate shall have food service facilities for the preparation and service of multiple entrees. The commission shall adopt rules as necessary to assure that the holder of a food and beverage certificate maintains food service as the primary business on the premises for which a food and beverage certificate has been issued.

(c) The fee for a food and beverage certificate shall be set at a level sufficient to recover the cost of issuing the certificate and administering this section.

(d) A certificate issued under this section expires on the expiration of the primary retail dealer's on-premise license. A certificate may be canceled at any time if the commission finds that the holder of the certificate is not operating primarily as a food service establishment. For the purposes of this section, it shall be presumed that a permittee is not primarily operating as a food service establishment if alcohol sales are in excess of 75 percent of the gross receipts of the premises. The commission may impose a fine not to exceed \$5,000 on the holder of a food and beverage certificate not operating as a food service establishment and may, upon finding that the permittee knowingly operated under a food and beverage certificate while not complying with this section, cancel the licensee's retail dealer's on-premise license.

(e) Except for Section 61.13, the statutory provisions and rules applying to the holder of a retail dealer's on-premise license as of January 1, 1996, and any applicable law enacted by the 74th Legislature, Regular Session, 1995, also apply to the holder of a food and beverage certificate. A statutory provision or rule applicable to a holder of a retail dealer's on-premise license enacted after January 1, 1996, does not apply to a holder of a food and beverage certificate unless the statute or rule specifically refers to its application to a holder of a food and beverage certificate.

SECTION 9. Section 109.57, Alcoholic Beverage Code, is amended by adding Subsection (e) to read as follows:

(e) A municipality located in a county that has a population of 1.2 million or more and that is adjacent to a county with a population of more than 250,000 or a municipality located in a county with a population of 250,000 or more and that is adjacent to a county with a population of 1.2 million or more may regulate, in a manner not otherwise prohibited by law, the location of an establishment issued a permit under Chapter 32 or 33 if:

(1) the establishment derives 35 percent or more of the establishment's gross revenue from the on-premises sale or service of alcoholic beverages and the premises of the establishment are located in a dry area; and

(2) the permit is not issued to a fraternal or veterans organization or the holder of a food and beverage certificate.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Yarbrough moved to adopt the conference committee report on **HB 1419**.

The motion prevailed.

HB 1810 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative S. Turner submitted the following conference committee report on **HB 1810**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1810** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Whitmire
Turner
Brown
Ellis

Telford
McCall
Rangel

On the part of the Senate

On the part of the House

HB 1810, A bill to be entitled An Act relating to membership on the boards of trustees of retirement systems for police officers in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4(b), Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The administrative head of the city, or his authorized representative.

(2) Three (3) employees of the police department having membership in the Pension System and elected by the members of such police department and system.

(3) Two (2) retired members receiving pensions from the Pension System [~~legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years~~], to be chosen by the elected members of the Pension Board and confirmed by the Board, being neither employees nor officers of such city.

(4) The City Treasurer of the city, or the person discharging the duties of the City Treasurer.

The terms of office of the elected members of the Pension Board shall be three (3) years, provided, however, that at the first election after the effective date of this Act, one such elected member shall be elected to a term of one year, one such elected member shall be elected to a term of two (2) years; and one such elected member shall be elected to a term of three (3) years. Thereafter, at an annual election called by the Chief of Police, and held during the month of December, one member shall be elected to a three-year term. Whenever a vacancy occurs among the three (3) elected members of the Pension Board, the Pension Board shall appoint a Pension Fund member to serve the balance of the calendar year and until the next regularly scheduled election of Board members. At that time, the membership of the police department shall elect a Pension Fund member to serve for the remainder of the term.

The term of office of appointed members of the Board shall be two (2) years, with such appointed members being nominated by the elected members of the Board and confirmed by the Board, and having terms commencing when the appointed members are qualified.

The term of office of the Board members statutorily provided for, shall be and continue so long as such member holds the position defined in this Act for automatic members of such Board.

SECTION 2. The change in law made by this Act in the qualifications for membership on the boards of trustees of retirement systems for police officers in certain municipalities applies only to members appointed for terms that begin on or after the effective date of this Act. Qualifications for membership on a board of trustees for a term that began before the effective date of this Act are those provided immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative S. Turner moved to adopt the conference committee report on **HB 1810**.

The motion prevailed.

SB 15 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Place submitted the conference committee report on **SB 15**.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of illness:

Allen on motion of Talton.

SB 15 - (consideration continued)

Representative Place moved to adopt the conference committee report on **SB 15**.

The motion prevailed. (Chisum, Corte, Danburg, Rabuck, and Swinford recorded voting no)

MESSAGE FROM THE SENATE

Austin, Texas, May 28, 1995

The Honorable Speaker of the House of Representatives
House Chamber

The Honorable
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

HB 2839 by Stiles (Sponsor-Lucio), relating to the borrowing powers of drainage districts.

HB 2898 by Harris, Jack (Sponsor-Madla), relating to the inspection and maintenance of dental X-ray equipment.

HB 3040 by Chisum (Sponsor-Haywood), relating to adoption of certain airport zoning regulations.

HB 3119 by Hunter, Bob and Naishtat (Sponsor-Patterson, Jerry), relating to the exemption from dues, fees, and charges provided to a veteran or dependent of a veteran enrolled at a public institution of higher education.

Respectfully,
Betty King
Secretary of the Senate

HB 788 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Brimer submitted the following conference committee report on **HB 788**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 788** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ratliff	Brimer
Cain	Moffat
Haywood	Shields
Shapiro	Oliveira
Wentworth	Ramsay
On the part of the Senate	On the part of the House

HB 788, A bill to be entitled An Act relating to the authority of a municipality to create an industrial development corporation and to levy a sales and use tax to carry out the projects of the corporation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4B(a)(1), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Eligible city" means a city:

(A) that is located in a county with a population of 750,000 or more, according to the most recent federal decennial census and in which the combined rate of all sales and use taxes imposed by the city, the state, and other political subdivisions of the state having territory in the city does not exceed 7.25 percent on the date of any election held under or made applicable to this section;

(B) that has a population of 400,000 or more, according to the most recent federal decennial census, and that is located in more than one county, and in which the combined rate of all sales and use taxes imposed by the city, the state, and other political subdivisions of the state having territory in the city, including taxes under this section, does not exceed 8.25 percent; [or]

(C) that is located in a county with a population of more than 1,100,000 according to the most recent federal decennial census, in which there are more than 40 incorporated municipalities according to the most recent federal decennial census, and in which the combined rate of all sales and use taxes imposed by the city, the state, and other political subdivisions of the state having territory in the city does not exceed 7.75 percent on the date of any election held under or made applicable to this section; or

(D) to which Section 4A of this Act applies.

(E) Paragraph (C) of this subdivision expires September 1, 1997.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

HB 788 - STATEMENT OF LEGISLATIVE INTENT

Representative Seidlits: Is it your representation to this body, Kim, that this bill would not allow the City of Arlington to increase their sales tax up to one-half percent over and above the existing level to build those projects that are outlined under the act which this bill amends? Is that your representation and intent?

Representative Brimer: It is, Curtis, and let me tell you why. The City of Arlington bellied up to the bar two sessions ago and chose amongst the citizens by majority to raise their own taxes to build their own stadium and pay for it themselves and not have the state do it.

Seidlits: It would appear that you're giving them the authority to belly up one more time to do it one-half.

Brimer: We're not. The comptroller has verified on that list that those are the only cities...

Seidlits: It is your representation to this body that the only cities affected

by your legislation are Bedford, Blue Mound, Kennedale, Lake Worth, Richland Hills, of which I understand all are located in Tarrant County, Texas?

Brimer: It is, and the chairman of Economic Development knew what was going on with this legislation from the first and worked with me. And we worked with the other cities—those that wanted to be eliminated—and made sure we had it properly drafted in the bill.

Seidlits: All right. I just wanted to understand your intent, and I appreciate your congeniality that you have shown.

Brimer: I want you to be at the first ribbon-cutting for the Little League Ball Park in Kennedale, Texas, as my guest.

HB 788 - (consideration continued)

Representative Brimer moved to adopt the conference committee report on **HB 788**.

A record vote was requested.

The motion prevailed by (Record 596): 109 Yeas, 28 Nays, 3 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Berlanga; Black; Bosse; Brady; Brimer; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Eiland; Elkins; Gallego; Glaze; Goodman; Goolsby; Gray; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hirschi; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; McCall; McCoulskey; Moffat; Munoz; Naishtat; Nixon; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Rabuck; Ramsay; Rangell; Raymond; Reyna; Romo; Rusling; Sadler; Saunders; Serna; Shields; Siebert; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Torres; Turner, B.; Walker; West; Williamson; Willis; Wohlgemuth; Woolley; Yost.

Nays — Alonzo; Bailey; Carter; Conley; Davis; Dutton; Ehrhardt; Farrar; Finnell; Giddings; Hartnett; Hochberg; Hudson; Longoria; Maxey; McDonald; Moreno; Mowery; Oakley; Price; Puente; Rhodes; Rodriguez; Seidlits; Solis; Tillery; Uher; Zbrank.

Present, not voting — Mr. Speaker; Greenberg; Wolens(C).

Absent, Excused — Allen; Wilson.

Absent — Carona; Dukes; Edwards; Hill; Smithee; Turner, S.; Van de Putte; Yarbrough.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 596. I intended to vote no.

Park

I was shown voting no on Record No. 596. I intended to vote yes.

Solis

HR 1208 - ADOPTED

The chair laid before the house the following privileged resolution:

By Yost,

HR 1208

BE IT RESOLVED by the House of Representatives of the State of Texas, That Rule 13, Section 9(a), Rules of the House of Representatives, 74th Legislature, Regular Session, 1995, is suspended, as provided by Rule 13, Section 9(f), to the extent described in this resolution, to enable the conference committee appointed to adjust the differences between the house and senate versions of H.B. No. 2294, relating to the regulation of groundwater, to successfully conclude the committee's deliberations, by authorizing the conferees to consider and take action on the following specific matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Section 36.205(d) to read as follows:

(d) A district affected by Subsection (c)(2) that also may assess a water use fee against a specific municipality shall assess an amount not to exceed 60 percent of the total funding of the district received from water use fees assessed against that municipality and other nonexempt users in the district. This subsection shall take precedence over all prior enactments.

Explanation: The amendment is necessary to adjust the relative financial responsibilities between certain districts and municipalities.

The resolution was adopted without objection.

REMARKS ORDERED PRINTED

Representative Seidlits moved to print remarks by Representatives Brimer and Seidlits on **HB 788**.

The motion prevailed without objection.

HB 2294 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Yost submitted the following conference committee report on **HB 2294**:

Austin, Texas, May 26, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2294** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister
Barrientos
Montford
Wentworth

On the part of the Senate

Yost
R. Lewis
Walker
Combs
Puente

On the part of the House

HB 2294, A bill to be entitled An Act relating to the regulation of groundwater; granting the power of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The caption of Title 2, Water Code, is amended to read as follows:

TITLE 2. ~~[STATE]~~ WATER ADMINISTRATION

SECTION 2. Title 2, Water Code, is amended by adding Subtitle E to read as follows:

SUBTITLE E. GROUNDWATER MANAGEMENT

CHAPTER 35. GROUNDWATER STUDIES

Sec. 35.001. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater management areas may be created as provided by this chapter.

Sec. 35.002. DEFINITIONS. In this chapter:

(1) "District" means any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the commission.

(4) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(5) "Groundwater" means water percolating below the surface of the earth.

(6) "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

(7) "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

(8) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

(9) "Board" means the board of directors of a district.

(10) "Director" means a member of a board.

(11) "Management area" means an area designated and delineated by the commission as an area suitable for management of groundwater resources.

(12) "Critical area" means an area designated and delineated by the commission as an area that is experiencing or is expected to experience critical groundwater problems.

(13) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created

under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

Sec. 35.003. SURFACE WATER LAWS NOT APPLICABLE. The laws and administrative rules relating to the use of surface water do not apply to groundwater.

Sec. 35.004. DESIGNATION OF MANAGEMENT AREAS. (a) On its own motion from time to time, or on receiving a petition, the commission may designate groundwater management areas. Each management area shall be designated with the objective of providing the most suitable area for the management of the groundwater resources. To the extent feasible, the management area shall coincide with the boundaries of a groundwater reservoir or a subdivision of a groundwater reservoir. The commission also may consider other factors, including the boundaries of political subdivisions.

(b) On the request of any person interested in the petition, or on the request of the commission, the executive director shall prepare available evidence relating to the configuration of a groundwater management area. Before making the designation, the commission shall consider the evidence prepared by the executive director and other evidence submitted at the hearing.

(c) The commission may alter the boundaries of designated management areas as required by future conditions and as justified by factual data. An alteration of boundaries does not invalidate the previous creation of any district.

(d) The commission shall designate groundwater management areas using the procedures applicable to rulemaking under the Administrative Procedure Act, Subchapter B, Chapter 2001, Government Code.

Sec. 35.005. PETITION TO DESIGNATE A GROUNDWATER MANAGEMENT AREA. (a) A petition may be submitted to the commission for the sole purpose of requesting that the commission designate a management area for all or part of one or more counties.

(b) A petition filed pursuant to this section must be signed by:

(1) a majority of the landowners in the proposed management area;
or

(2) if there are more than 50 landowners in the proposed management area, at least 50 of those landowners.

(c) A petition filed pursuant to this section must contain the following statement:

"Petitioners request that the Texas Natural Resource Conservation Commission designate a groundwater management area to include all or part of _____ County (counties). The management area shall be designated with the objective of providing the most suitable area for the management of groundwater resources of the part of the state in which a district is to be located. Petitioners understand that this petition requests only the designation of a management area, but that all or part of the land in the management area designated may later be added to an existing groundwater conservation district or become a new groundwater conservation district, as provided by Chapter 36 of the Water Code."

(d) A petition shall include a map that shows the location of the proposed management area and may include any other information desired by the petitioners concerning the proposed management area.

(e) The petitioners shall file the petition with the executive director for review in accordance with the rules of the commission. The petitioners shall supply any additional information requested by the commission or the executive director.

(f) The commission shall act on the petition within a reasonable amount of time.

Sec. 35.006. NOTICE FOR DESIGNATION OF MANAGEMENT AREA.

(a) In addition to the notice required under the Administrative Procedure Act, Section 2001.023, Government Code, the petitioners shall have notice published in at least one newspaper with general circulation in the county or counties in which the proposed management area is to be located. Notice must be published not later than the 30th day before the date set for the commission to consider the designation of the management area.

(b) The notice must include:

(1) a statement of the general purpose and effect of designating the proposed management area;

(2) a map generally outlining the boundaries of the proposed management area or notice of the location at which a copy of the map may be examined or obtained; and

(3) the time and place at which the commission will consider the designation of the management area.

(c) If the commission designates a management area on its own motion, the commission shall give the same notice as required of the petitioner under this section.

Sec. 35.007. IDENTIFYING, DESIGNATING, AND DELINEATING CRITICAL AREAS. (a) The executive director and the executive administrator shall meet at least once a year to identify those areas of the state that are experiencing or that are expected to experience, based on information available to the commission and the Texas Water Development Board, within the immediately following 20-year period, critical groundwater problems, including shortages of surface or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies.

(b) If the executive director concludes that an area of the state should be considered for designation as a critical area, the executive director shall prepare a report to the commission.

(c) The executive director shall begin preparation of a critical area report by requesting a study from the executive administrator. The study must include an appraisal of the hydrogeology of the area and matters within the Texas Water Development Board's planning expertise relevant to the area. The study must be completed and delivered to the executive director on or before the 90th day following the date of the request. If the study is not delivered within this 90-day period, the executive director may proceed with the preparation of the report.

(d) The report shall include:

(1) the recommended delineation of the boundaries of any proposed critical area in the form of a rule to be considered for adoption by the commission;

(2) the reasons and supporting information for or against designating the area as a critical area;

(3) a recommendation regarding whether a district should be created in the critical area or whether the critical area should be added to an existing district;

(4) any other information that the executive director considers helpful to the commission.

(e) The executive director must complete the report and file it with the commission on or before the 210th day following the date on which the executive administrator was requested to produce a study. The executive director shall make the report available for public inspection by providing a copy of the report to at least one library in each county in which the proposed critical area is located.

(f) To carry out this section, the executive director may make necessary studies, hold hearings, solicit and collect information, and use information already prepared by the executive director or the executive administrator for other purposes.

Sec. 35.008. PROCEDURES FOR DESIGNATION OF CRITICAL AREAS. (a) The commission shall designate critical areas using the procedures applicable to rulemaking under the Administrative Procedure Act, Subchapter B, Chapter 2001, Government Code, but if procedures required by this chapter are in conflict with that Act, this chapter controls.

(b) The designation of a critical area may not be appealed nor may it be challenged under the Administrative Procedure Act, Section 2001.038, Government Code.

Sec. 35.009. NOTICE AND HEARING. (a) In addition to the notice required for rulemaking under the Administrative Procedure Act, Section 2001.023, Government Code, the commission shall have notice published in at least one newspaper with general circulation in the county or counties in which the proposed critical area is to be located. Notice must be published not later than the 30th day before the date set for the commission to consider the designation of the critical area.

(b) The notice must include:

(1) a statement of the general purpose and effect of designating the proposed critical areas;

(2) a map generally outlining the boundaries of the proposed critical area or notice of the location at which a copy of the map may be examined or obtained;

(3) a description or the name of the locations at which the commission has provided copies of the executive director's report to be made available for public inspection; and

(4) the date, time, and place at which the commission will consider the designation of the critical areas.

Sec. 35.010. CONSIDERATION OF CREATION OF DISTRICT OR ADDITION OF LAND IN CRITICAL AREA TO EXISTING DISTRICT. (a)

Following its designation of a critical area, the commission may call a hearing to consider:

(1) whether a district should be created over all or part of a critical area; or

(2) whether all or part of the land in the critical area should be added to an existing district.

(b) Evidentiary hearings shall be held at a location in one of the counties in which the critical area is located or in the nearest convenient location if adequate facilities are not available in the critical area.

(c) At the hearing, the commission shall hear testimony and receive evidence from all interested parties. The commission shall consider the executive director's report and supporting information and the testimony and evidence received at the hearing. If the commission considers further information necessary, it may request it from any source.

Sec. 35.011. NOTICE OF HEARING TO CREATE DISTRICT OR ADD CRITICAL AREA TO EXISTING DISTRICT. (a) The commission shall have notice of the hearing published in a newspaper with general circulation in the county or counties in which the area being considered for district creation or addition to an existing district is located. Notice must be published not later than the 30th day before the date of the hearing.

(b) The notice must include:

(1) a general statement of the nature and purpose of the district that may be created in the critical area;

(2) if applicable, a statement that all or part of the land in the critical area could be added to an existing district;

(3) a map generally outlining the boundaries of the critical area being considered for district creation or addition to an existing district or notice of the location at which a copy of the map may be examined or obtained;

(4) a statement that the full executive director's report concerning the critical area in question is available at the commission's main office in Austin, Texas, and that the report is available for inspection during regular business hours;

(5) the name and address of each library in the proposed critical area to which the commission has provided copies of the executive director's report; and

(6) the date, time, and place of the hearing.

(c) The commission also shall give written notice of the date, time, place, and purpose of the hearing to the governing body of each political subdivision located either partially or entirely in the critical area. The notice must be given before the 30th day preceding the date set for the hearing.

Sec. 35.012. COMMISSION ORDER. (a) At the conclusion of its hearing and considerations, the commission shall issue an order stating its findings and conclusions.

(b) If the commission finds that the land and other property in the critical area would benefit from the creation of one or more districts, that there is a public need for one or more districts, and that the creation of one or more districts would further the public welfare, the commission shall issue an order stating that the creation of one or more districts is needed.

(c) During the period between the date of issuance of a commission order under Subsection (b) and one year after the close of the next regular session of the legislature following the issuance of the order, the landowners in the critical area may:

(1) create one or more districts under Subchapter B, Chapter 36;

(2) have the area annexed to a district that adjoins the area; or

(3) create one or more districts through the legislative process.

(d) The commission shall identify the areas subject to the order of the commission issued under Subsection (b) that have not, in the period provided by Subsection (c), been incorporated into a district, and shall delineate proposed boundaries of a district to include those areas. If the commission proposes the creation of one or more districts, the commission shall begin the procedures for creation of a district provided in Subchapter B, Chapter 36.

(e) If the commission fails to find that the district would be a benefit to the land and other property within the critical area, that there is a public need for the district, or that creation of the district will further the public welfare, the commission shall issue an order stating that a district should not be created within the boundaries of the critical area.

(f) An order of the commission issued under this section may not be appealed.

Sec. 35.013. ADDING CRITICAL AREA TO EXISTING DISTRICT. (a) If land in a critical area is located adjacent to one or more existing districts, the commission, instead of issuing an order under Section 35.012, may issue an order recommending that the critical area be added to the existing district designated by the commission. In its order, the commission must find that the land and other property in the critical area and the land in the existing district will benefit from the addition of the area, that there is a public need to add the critical area to the existing district, and that the addition of the land to the existing district would further the public welfare.

(b) If the executive director recommends that the critical area be added to an existing district or if the commission considers it possible to add the critical area to an adjacent existing district, the commission shall give notice to the board of the existing district recommended by the executive director or considered by the commission to possibly serve the area and to any other existing districts adjacent to the critical area.

(c) The commission shall submit a copy of the order to the board of the district to which it is recommending the critical area be added. The board shall vote on the addition of the critical area to the district and shall advise the commission of the outcome.

(d) If the board votes to accept the addition of the critical area to the district, the board shall call an election within the critical area as delineated by the commission to determine if the critical area will be added to the district. In the order calling the election, the board shall designate election precincts and polling places for the elections.

(e) The board shall give notice of the election and the proposition to be voted on. The board shall publish notice of the election at least one time in one or more newspapers with general circulation within the boundaries of the critical area. The notice must be published before the 30th day preceding the date set for the election.

(f) The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of _____ (briefly describe critical area) in the _____ District." If the district has issued bonds, the proposition shall include the following language: "and assumption by the described area of a proportional share of the outstanding indebtedness of the district."

(g) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the critical area and declare the results. If a majority of the voters in the critical area voting on the proposition vote in favor of the proposition, the board shall declare that the critical area is added to the district. If a majority of the voters in the critical area voting on the proposition vote against adding the critical area to the district, the board shall declare that the critical area is not added to the district. The board shall file a copy of the election results with the commission.

(h) If the voters approve adding the critical area to the district, the board of the district to which the critical area is added shall provide reasonable representation on that board compatible with the district's existing scheme of representation.

(i) If the proposition is defeated, another election to add the critical area to an existing district may not be called before the first anniversary of the date on which the election on the proposition was held.

Sec. 35.014. COSTS OF ELECTIONS. (a) The costs of an election to create a district at which a district is authorized to be created shall be paid by the district.

(b) The costs of an election to add a critical area to an existing district at which the voters approve adding the critical area to the district shall be paid by the existing district.

(c) The costs of an election to create a district or add a critical area to an existing district at which the proposition fails shall be paid by the commission.

Sec. 35.015. STATE ASSISTANCE. (a) A political subdivision located in or that has within its boundaries an area or part of an area delineated as a critical area, and in which the qualified voters fail to approve the creation of a district or to join an existing district, shall not be eligible to receive any financial assistance from the state under Chapter 15, 16, or 17 for use within that portion of the critical area not covered by a district.

(b) A political subdivision located in an area delineated as a critical area, and in which qualified voters approve the creation of a district or annexation into an existing district, shall be given consideration to receive financial assistance from the state under Chapter 17 for funds to be used in addressing issues identified in the critical area report in the manner provided by Sections 17.124 and 17.125, except that the board is not required to make the finding set out in Section 17.125(a)(2).

Sec. 35.016. EXEMPTION FROM CHAPTER. (a) This chapter does not apply to any active groundwater conservation district or to land within an active groundwater conservation district.

(b) A district is considered active if it meets the requirements in Section 36.301(c).

Sec. 35.017. STATE-OWNED LAND. If state-owned land or a portion of state-owned land is located in a critical area, the state agency that has management and control over that land under the constitution or by statute may elect by written agreement with the commission and the district to include the state-owned land in the district. The agreement shall be entered into as provided by the Texas Intergovernmental Cooperation Act, Chapter 741, Government Code, and may include provisions for the payment by the state agency of reasonable fees to the district. If the state does not elect to enter into the agreement to include the state-owned land in the district, the state agency must establish a groundwater management plan that will conserve, protect, and prevent the waste of groundwater on that state-owned land.

CHAPTER 36. GROUNDWATER CONSERVATION DISTRICTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. DEFINITIONS. In this chapter:

(1) "District" means any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the commission.

(4) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(5) "Groundwater" means water percolating below the surface of the earth.

(6) "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

(7) "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

(8) "Waste" means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(E) wilfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any

land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;

(F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205.

(9) "Use for a beneficial purpose" means use for:

(A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;

(B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or

(C) any other purpose that is useful and beneficial to the user.

(10) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

(11) "Board" means the board of directors of a district.

(12) "Director" means a member of a board.

(13) "Management area" means an area designated and delineated by the commission under Chapter 35 as an area suitable for management of groundwater resources.

(14) "Critical area" means an area designated and delineated by the commission under Chapter 35 as an area experiencing or expected to experience critical groundwater problems.

(15) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes).

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, subject to rules promulgated by a district.

[Sections 36.003-36.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 36.011. METHOD OF CREATING DISTRICT. (a) A groundwater conservation district may be created under and subject to the authority, conditions, and restrictions of Section 59, Article XVI, Texas Constitution.

(b) The commission has exclusive jurisdiction over the delineation of management areas and the creation of districts.

Sec. 36.012. COMPOSITION OF DISTRICT. (a) A district may include all or part of one or more counties, cities, districts, or other political subdivisions.

(b) A district may not include territory located in more than one county except on a majority vote of the voters residing within the territory in each

county sought to be included in the district at an election called for that purpose.

(c) The boundaries of a district must be coterminous with or inside the boundaries of a management area or a critical area.

(d) A district may consist of separate bodies of land separated by land not included in the district.

(e) A majority of the voters in a segregated area must approve the creation of the district before that area may be included in the district.

Sec. 36.013. PETITION TO CREATE DISTRICT. (a) A petition requesting creation of a district must be filed with the executive director for review and submission to the commission.

(b) The petition filed pursuant to this section must be signed by:

(1) a majority of the landowners within the proposed district, as indicated by the county tax rolls; or

(2) if there are more than 50 landowners in the proposed district, at least 50 of those landowners.

(c) The petition must include:

(1) the name of the proposed district;

(2) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;

(3) the purpose or purposes of the district;

(4) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated costs of those projects according to the persons filing the projects if the projects are to be funded by the sale of bonds or notes; and

(5) any additional terms or conditions that restrict the powers of the district from those provided in this chapter.

(d) If a part of the proposed district is not included within either a management area or a critical area, the petition to create a district may also contain a request to create a management area. A request to create a management area must comply with the requirements for a petition in Section 35.005, and may be acted on by the commission separately from the petition to create the district.

Sec. 36.014. NOTICE AND HEARING ON DISTRICT CREATION. (a) The notice of hearing on a petition must include a statement of the nature and purpose of the proposed district and the date, time, and place of hearing.

(b) The notice must be posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located.

(c) Notice of the hearing shall be published in a newspaper with general circulation in the county or counties in which the proposed district is to be located. Notice must be published not later than the 30th day before the date of the hearing.

(d) If the petition contains a request to create a management area in all or part of the proposed district, the notice must also be given in accordance with the requirements in Section 35.006 for the designation of management areas.

Sec. 36.015. FINDINGS. (a) If the commission finds that a district is

feasible and practicable, that it would be a benefit to the land in the district, and that it would be a public benefit or utility, the commission shall issue an order containing these findings granting the petition.

(b) If the commission finds that a district is not feasible and practicable, that it would not be a benefit to the land in the district, that it would not be a public benefit or utility, or that it is not needed, the commission by order shall deny the petition.

(c) The commission may adjust the boundaries of the proposed district to exclude any land that would not be benefited by inclusion in the district and is not necessary to the district for proper regulation of the groundwater reservoir.

(d) If the commission grants the petition to create the district, it shall direct in its order creating the district that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors.

(e) The refusal to grant a petition to create a district does not invalidate or affect the designation of any management area requested in the same petition.

(f) The commission shall act on the petition within a reasonable amount of time.

Sec. 36.016. APPOINTMENT OF TEMPORARY DIRECTORS. (a) If the commission grants a petition to create a district, it shall appoint five temporary directors who shall serve until the initial directors are elected and have qualified for office or until the voters fail to approve the creation of the district.

(b) If an appointee of the commission fails to qualify or if a vacancy occurs in the office of temporary director, the commission shall appoint an individual to fill the vacancy.

(c) As soon as all temporary directors have qualified, the directors shall meet, take the oath of office, and elect a chairman and vice chairman from among their membership. The chairman shall preside at all meetings of the board and, in the chairman's absence, the vice chairman shall preside.

Sec. 36.017. CONFIRMATION AND DIRECTORS' ELECTION. (a) Not later than the 60th day after the date all temporary directors have been appointed and have qualified, the temporary directors shall meet and order an election to be held within the boundaries of the proposed district to approve the creation of the district and to elect permanent directors.

(b) In the order calling the election, the temporary directors shall designate election precincts and polling places for the election. In designating the polling places, the temporary directors shall consider the needs of all voters for conveniently located polling places.

(c) The temporary directors shall publish notice of the election at least one time in at least one newspaper with general circulation within the boundaries of the proposed district. The notice must be published before the 30th day preceding the date of the election.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the _____ Groundwater Conservation District." If the district levies a maintenance tax for payment of its expenses, the proposition shall include the following language: "and the levy of a maintenance tax at a rate not to exceed _____ cents for each \$100 of assessed valuation."

(e) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the temporary board, and the board shall canvass the returns and declare the result. The board shall file a copy of the election result with the commission.

(f) If a majority of the votes cast at the election favor the creation of the district, the temporary board shall declare the district created and shall enter the result in its minutes.

(g) If a majority of the votes cast at the election are against the creation of the district, the temporary board shall declare the district defeated and shall enter the result in its minutes.

(h) If the majority of the votes cast at the election are against the creation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.

Sec. 36.018. INCLUSION OF MUNICIPALITY. (a) If part of the territory to be included in a district is located in a municipality, a separate voting district may not be established in the municipality for the purpose of determining whether the municipality as a separate area is to be included in the district.

(b) If for any other reason the territory in a municipality is established as a separate voting district, the failure by the voters in the municipal territory to confirm the creation of the district or the annexation of territory to a district does not prevent the territory in the municipality from being included in the district.

Sec. 36.019. CONFIRMATION ELECTION IN DISTRICT INCLUDING LAND IN MORE THAN ONE COUNTY. A district, the major portion of which is located in one county, may not be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is approved by a majority of the voters of the other county voting in an election called for that purpose.

Sec. 36.020. BOND AND TAX PROPOSAL. (a) At an election to create a district, the temporary directors may include a proposition for the issuance of bonds or notes, the levy of taxes to retire all or part of the bonds or notes, and the levy of a maintenance tax. The maintenance tax rate may not exceed 50 cents on each \$100 of assessed valuation.

(b) The board shall include in any bond and tax proposition the maximum amount of bonds or notes to be issued and their maximum maturity date.

Sec. 36.021. NOTIFICATION OF COUNTY CLERK. Within 30 days following the creation of a district or any amendment to the boundaries of a district, the board of directors shall file with the county clerk of each county in which all or part of the district is located a certified copy of the description of the boundaries of the district. Each county clerk shall record the certified copy of the boundaries in the property records of that county.

[Sections 36.022-36.050 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION

Sec. 36.051. BOARD OF DIRECTORS. (a) The governing body of a district is the board of directors, which shall consist of not fewer than five and not more than 11 directors elected for four-year terms. The number of directors

may be changed as determined by the board when territory is annexed by the district.

(b) A member of a governing body of another political subdivision is ineligible for appointment or election as a director. A director is disqualified and vacates the office of director if the director is appointed or elected as a member of the governing body of another political subdivision. This subsection does not apply to any district with a population less than 50,000.

(c) Vacancies in the office of director shall be filled by appointment of the board. If the vacant office is not scheduled for election for longer than two years at the time of the appointment, the board shall order an election for the unexpired term to be held as part of the next regularly scheduled director's election. The appointed director's term shall end on qualification of the director elected at that election.

Sec. 36.052. OTHER LAWS NOT APPLICABLE. Other laws governing the administration or operations of districts created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, shall not apply to any district governed by this chapter. This chapter prevails over any other law in conflict or inconsistent with this chapter, except any special law governing a specific district shall prevail over this chapter.

Sec. 36.053. QUORUM. A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district.

Sec. 36.054. OFFICERS. (a) After a district is created and the directors have qualified, the board shall meet, elect a president, vice president, secretary, and any other officers or assistant officers as the board may deem necessary and begin the discharge of its duties.

(b) After each directors' election, the board shall meet and elect officers.

(c) The president is the chief executive officer of the district, presides at all meetings of the board, and shall execute all documents on behalf of the district. The vice president shall act as president in case of the absence or disability of the president. The secretary is responsible for seeing that all records and books of the district are properly kept and shall attest the president's signature on all documents.

(d) The board may appoint another director, the general manager, or any employee as assistant or deputy secretary to assist the secretary, and any such person shall be entitled to certify as to the authenticity of any record of the district, including but not limited to all proceedings relating to bonds, contracts, or indebtedness of the district.

(e) After any election or appointment of a director, a district shall notify the executive director within 30 days after the date of the election or appointment of the name and mailing address of the director chosen and the date that director's term of office expires. The executive director shall provide forms to the district for such purpose.

Sec. 36.055. SWORN STATEMENT, BOND, AND OATH OF OFFICE.

(a) As soon as practicable after a director is elected or appointed, that director shall make the sworn statement prescribed by the constitution for public office.

(b) As soon as practicable after a director has made the sworn statement, and before beginning to perform the duties of office, that director shall take the oath of office prescribed by the constitution for public officers.

(c) Before beginning to perform the duties of office, each director shall execute a bond for \$10,000 payable to the district and conditioned on the faithful performance of that director's duties. All bonds of the directors shall be approved by the board and paid for by the district.

(d) The sworn statement, bond, and oath shall be filed with the district and retained in its records. A duplicate original of the sworn statement and the oath shall also be filed with the secretary of state within 10 days after their execution and need not be filed before the new director begins to perform the duties of office.

Sec. 36.056. GENERAL MANAGER. (a) The board may employ or contract with a person to perform such services as general manager for the district as the board may from time to time specify. The board may delegate to the general manager full authority to manage and operate the affairs of the district subject only to orders of the board.

(b) The board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the business and operation of the district and to determine the compensation to be paid all employees other than the general manager.

(c) Except in a district that is composed of the territory of more than one county, a director may be employed as general manager of the district. The compensation of a general manager who also serves as a director shall be established by the other directors.

Sec. 36.057. MANAGEMENT OF DISTRICT. (a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators, bookkeepers, tax assessors and collectors, auditors, and administrative staff.

(b) The board shall set the compensation and terms for consultants.

(c) In selecting attorneys, engineers, auditors, financial advisors, or other professional consultants, the district shall follow the procedures provided in the Professional Services Procurement Act, Subchapter A, Chapter 2254, Government Code.

(d) The board shall require an officer, employee, or consultant who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, in an amount determined by the board to be sufficient to safeguard the district. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the district. Such bond shall be signed or endorsed by a surety company authorized to do business in the state.

(e) The board may pay the premium on surety bonds required of officials, employees, or consultants of the district out of any available funds of the district, including proceeds from the sale of bonds.

(f) The board may adopt bylaws to govern the affairs of the district to perform its purposes. The board may, by resolution, authorize its general manager or other employee to execute documents on behalf of the district.

(g) The board shall also have the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district to perform its purposes.

Sec. 36.058. CONFLICTS OF INTEREST. A director of a district is subject to the provisions of Chapter 171, Local Government Code, relating to the regulation of conflicts of officers of local governments.

Sec. 36.059. GENERAL ELECTIONS. (a) All elections shall be generally conducted in accordance with the Election Code except as otherwise provided for by this chapter. Write-in candidacies for any district office shall be governed by Subchapter C, Chapter 146, Election Code.

(b) The directors of the district shall be elected according to the precinct method as defined by Chapter 12, page 1105, Special Laws, Acts of the 46th Legislature, Regular Session, 1939. To be qualified to be elected as a director, a person must be a registered voter in the precinct that the person represents. If any part of a municipal corporation is a part of one precinct, then no part of the municipal corporation shall be included in another precinct, except that a municipal corporation having a population of more than 200,000 may be divided between two or more precincts. In a multicounty district, not more than two of the five precincts may include the same municipal corporation or part of the same municipal corporation.

Sec. 36.060. FEES OF OFFICE; REIMBURSEMENT. (a) A director is entitled to receive fees of office of not more than \$100 a day for each day the director actually spends performing the duties of a director. The fees of office may not exceed \$6,000 a year.

(b) Each director is also entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

(c) In order to receive fees of office and to receive reimbursement for expenses, each director shall file with the district a verified statement showing the number of days actually spent in the service of the district and a general description of the duties performed for each day of service.

Sec. 36.061. POLICIES. (a) Subject to the law governing the district, the board shall adopt the following in writing:

(1) a code of ethics for district directors, officers, employees, and persons who are engaged in handling investments for the district;

(2) a policy relating to travel expenditures;

(3) a policy relating to district investments that ensures that:

(A) purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and

(B) periodic review is made of district investments to evaluate investment performance and security;

(4) policies and procedures for selection, monitoring, or review and evaluation of professional services;

(5) policies that ensure a better use of management information, including:

(A) budgets for use in planning and controlling cost;

(B) an audit or finance committee of the board; and

(C) uniform reporting requirements that use "Audits of State and Local Governmental Units" as a guide on audit working papers and that uses "Governmental Accounting and Financial Reporting Standards."

(b) The state auditor may audit the financial transactions of any district if the state auditor determines that the audit is necessary.

Sec. 36.062. OFFICES AND MEETING PLACES. (a) The board shall designate from time to time and maintain one or more regular offices for conducting the business of the district and maintaining the records of the district. Such offices may be located either inside or outside the district's boundaries as determined in the discretion of the board.

(b) The board shall designate one or more places inside or outside the district for conducting the meetings of the board.

Sec. 36.063. NOTICE OF MEETINGS. Notice of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

Sec. 36.064. MEETINGS. (a) The board shall hold regular meetings at least quarterly. It may hold meetings at other times as required for the business of the district.

(b) Meetings shall be conducted and notice of meetings shall be posted in accordance with the Open Meetings Act, Chapter 551, Government Code. A meeting of a committee of the board, or a committee composed of representatives of more than one board, where less than a quorum of any one board is present is not subject to the provisions of the Open Meetings Act, Chapter 551, Government Code.

Sec. 36.065. RECORDS. (a) The board shall keep a complete account of all its meetings and proceedings and shall preserve its minutes, contracts, records, notices, accounts, receipts, and other records in a safe place.

(b) The records of each district are the property of the district and are subject to Chapter 552, Government Code.

(c) The preservation, storage, destruction, or other disposition of the records of each district is subject to the requirements of Chapter 201, Local Government Code, and rules adopted thereunder.

Sec. 36.066. SUITS. (a) A district may sue and be sued in the courts of this state in the name of the district by and through its board. All courts shall take judicial notice of the creation of the district and of its boundaries.

(b) Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

(c) The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon a district may be served.

(d) Except as provided in Subsection (e), no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district;

(2) any bonds or other obligations issued by a district; or

(3) the validity or the authorization of a contract with the United States by a district.

(e) The matters listed in Subsection (d) may be judicially inquired into at any time and determined in any suit brought by the State of Texas through the attorney general. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this code or by the Texas Constitution. It is specifically provided, however, that no such proceeding shall affect the validity of or security for any bonds or other obligations theretofore issued by a district if such bonds or other obligations have been approved by the attorney general.

(f) A district shall not be required to give bond for appeal, injunction, or costs in any suit to which it is a party and shall not be required to deposit more than the amount of any award in any eminent domain proceeding.

(g) If the district prevails in any suit other than a suit in which it voluntarily intervenes, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

Sec. 36.067. CONTRACTS. (a) A district shall contract, and be contracted with, in the name of the district.

(b) A district may purchase property from any other governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.

Sec. 36.068. EMPLOYEE BENEFITS. (a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the district.

(b) The board may establish a public retirement system in accordance with the provisions of Chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

(c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees and may adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

[Sections 36.069-36.100 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 36.101. RULEMAKING POWER. (a) A district may make and enforce rules to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence or prevent waste of groundwater and to carry out the powers and duties provided by this chapter.

(b) After notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board. Notice in this section shall include publication of the agenda of the hearing in one or more newspapers of general circulation in the county or counties in which the district is located.

(c) The board shall compile its rules and make them available for use and inspection at the district's principal office.

Sec. 36.102. ENFORCEMENT OF RULES. (a) A district may enforce this chapter and its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.

(b) The board may set reasonable civil penalties for breach of any rule of the district that shall not exceed the jurisdiction of a justice court as provided by Section 27.031, Government Code.

(c) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(d) If the district prevails in any suit to enforce its rules, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

Sec. 36.103. IMPROVEMENTS AND FACILITIES. (a) A district may build, acquire, or obtain by any lawful means any property necessary for the district to carry out its purpose and the provisions of this chapter.

(b) A district may:

(1) acquire land to erect dams or to drain lakes, draws, and depressions;

(2) construct dams;

(3) drain lakes, depressions, draws, and creeks;

(4) install pumps and other equipment necessary to recharge a groundwater reservoir or its subdivision; and

(5) provide necessary facilities for the purchase, sale, transportation, and distribution of water.

Sec. 36.104. PURCHASE, SALE, TRANSPORTATION, AND DISTRIBUTION OF WATER. A district may purchase, sell, transport, and distribute surface water or groundwater for any purpose.

Sec. 36.105. EMINENT DOMAIN. (a) A district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in property if that property interest is necessary to the exercise of the authority conferred by this chapter.

(b) The power of eminent domain authorized in this section may not be used for the condemnation of land for the purpose of acquiring rights to groundwater, surface water or water rights.

(c) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit a bond as provided by Section 21.021(a), Property Code.

(d) In a condemnation proceeding brought by a district, the district is not required to pay in advance or give bond or other security for costs in the trial court, to give bond for the issuance of a temporary restraining order or a temporary injunction, or to give bond for costs or supersedeas on an appeal or writ of error.

(e) In exercising the power of eminent domain, if the district requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission or distribution, telegraph, or telephone lines, conduits, poles, or facilities, the

district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities after deducting the net salvage value derived from the old facility.

Sec. 36.106. SURVEYS. A district may make surveys of the groundwater reservoir or subdivision and surveys of the facilities for development, production, transportation, distribution, and use of the water, in order to determine the quantity of water available for production and use and to determine the improvements, development, and recharging needed by a reservoir or its subdivision.

Sec. 36.107. RESEARCH AND PLANNING. (a) A district may carry out any research projects deemed necessary by the board.

(b) Following notice and hearing, the district shall develop a comprehensive management plan for the most efficient use of the groundwater, for controlling and preventing waste of groundwater, and for controlling and preventing subsidence. The plan may be reviewed annually but must be reviewed by the board at least once every five years.

(c) The district shall specify in the management plan, in as much detail as possible, the acts, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules. The district shall adopt rules necessary to implement the management plan. The district shall file a copy of the management plan and the rules with the commission.

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.107 covering that district's respective territory. On completion of the plan, each district shall forward a copy of the new revised management plan to the other districts in the management area.

(b) The board of directors of each district in the management area may, by resolution, call a joint meeting with the boards of directors of the other districts in the management area to review the management plans and accomplishments for the management area. The boards shall meet to consider the plans individually and shall compare them to other management plans then in force in the management area. In reviewing the management plans, the boards shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally; and

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area.

(c) A joint meeting of the boards of directors must be held in accordance with the Open Meetings Act, Chapter 551, Government Code. Notice of the meeting shall be given in accordance with the requirements for notice of district board of directors meetings under that Act. In addition, notice of the meeting

shall be published not later than the 30th day before the date of the scheduled meeting in a newspaper with general circulation in each county in the management area.

(d) A district in the management area may file a petition with the commission requesting an inquiry if the petitioner district believes that:

(1) another district in the management area has failed to adopt rules;

(2) the groundwater in the management area is not adequately protected by the rules adopted by another district; or

(3) the groundwater in the management area is not adequately protected due to the failure of another district to enforce substantial compliance with its rules.

(e) Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

(1) dismiss it if it finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (f).

(f) The commission may appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

(g) Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, prepare a report to the commission. The commission may direct the review panel to conduct public hearings at a location in the management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

(h) In its report, the review panel shall include:

(1) a summary of all evidence taken in any hearing on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and

(3) any other information the panel considers appropriate.

Sec. 36.109. COLLECTION OF INFORMATION. A district may collect any information the board deems necessary, including information regarding the use of groundwater, water conservation, and the practicability of recharging a groundwater reservoir.

Sec. 36.110. PUBLICATION OF PLANS AND INFORMATION. A district may publish its plans and the information it develops, bring them to the attention of the users of groundwater in the district, and encourage the users to adopt and use them.

Sec. 36.111. RECORDS AND REPORTS. The district shall require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of groundwater.

Sec. 36.112. DRILLERS' LOGS. A district shall require that accurate drillers' logs be kept of water wells and that copies of drillers' logs and electric logs be filed with the district.

Sec. 36.113. PERMITS FOR WELLS. A district shall require permits for the drilling, equipping, or completing of wells, or for substantially altering the size of wells or well pumps. Permits may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration of wells or pumps that may be necessary to conserve the groundwater, prevent waste, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

Sec. 36.114. PERMIT: APPLICATION AND HEARING. The district shall promptly consider and pass on each application for a permit. If, within 20 days after the date it is submitted, an application has not been passed on or set for a hearing on a specific date, the applicant may petition the district court of the county where the land is located for a writ of mandamus to compel the district to act on the application or set a date for a hearing on the application. A hearing shall be held within 35 days after the setting of the date and the district shall act on the application within 35 days after the date of the hearing.

Sec. 36.115. DRILLING OR ALTERING WELL WITHOUT PERMIT. (a) No person, firm, or corporation may drill a well without first obtaining a permit from the district.

(b) No person, firm, or corporation may alter the size of a well or well pump such that it would bring that well under the jurisdiction of the district without first obtaining a permit from the district.

(c) No person, firm, or corporation may operate a well without first obtaining a permit from the district.

(d) A violation occurs on the first day the drilling, alteration, or operation begins and continues each day thereafter until the appropriate permits are approved.

Sec. 36.116. REGULATION OF SPACING AND PRODUCTION. In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, or to prevent waste, a district may provide for the spacing of water wells and may regulate the production of wells.

Sec. 36.117. EXCEPTIONS; LIMITATIONS. (a) A district may not require a permit for:

(1) drilling or producing from a well either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) the drilling or alteration of the size of a well or to restrict the production of a well if the water produced or to be produced from the well is used or to be used to supply the domestic needs of 10 or fewer households and a person who is a member of each household is either the owner of the well, a person related to the owner or a member of the owner's household within the second degree by consanguinity, or an employee of the owner;

(3) the drilling or alteration of the size of a well or to restrict the production from the well if the water produced or to be produced from the well is used or to be used to provide water for feeding livestock and poultry connected with farming, ranching, or dairy enterprises;

(4) water wells to supply water for hydrocarbon production activities, regardless of whether those wells are producing, that are associated with any well permitted by the Railroad Commission of Texas drilled before September 1, 1985; or

(5) jet wells used for domestic needs.

(b) The board shall adopt rules determining the applicability of Subsection (a)(3) to facilities used primarily for feeding livestock.

(c) The district shall not deny the owner of a tract of land, or his lessee, who has no well equipped to produce more than 25,000 gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce groundwater from his land, subject to the rules of the district.

(d) A district may not restrict the production of any well equipped to produce 25,000 gallons or less a day.

(e) Nothing in this chapter applies to wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluid, or for any other purpose, under permits issued by the Railroad Commission of Texas. A district may not require a permit to drill a well to supply water for drilling any of these wells permitted by the Railroad Commission of Texas. Any well that ceases to be used for these purposes and is then used as an ordinary water well is subject to the rules of the district.

(f) Water wells exempted under this section shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(g) A district shall require water wells exempted under this section to be registered with the district. All exempt water wells shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

Sec. 36.118. OPEN OR UNCOVERED WELLS. (a) A district may require the owner or lessee of land on which an open or uncovered well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use.

(b) As used in this section, "open or uncovered well" means an artificial excavation dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required by this chapter.

(c) If the owner or lessee fails or refuses to close or cap the well in compliance with this chapter in accordance with district rules, any person, firm, or corporation employed by the district may go on the land and close or cap the well safely and securely.

(d) Reasonable expenses incurred by the district in closing or capping a well constitute a lien on the land on which the well is located.

(e) The lien arises and attaches upon recordation in the deed records of the county where the well is located an affidavit, executed by any person conversant with the facts, stating the following:

- (1) the existence of the well;
- (2) the legal description of the property on which the well is located;
- (3) the approximate location of the well on the property;
- (4) the failure or refusal of the owner or lessee, after notification, to close the well within 10 days after the notification;
- (5) the closing of the well by the district, or by an authorized agent, representative, or employee of the district; and
- (6) the expense incurred by the district in closing the well.

(f) Nothing in this section affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

Sec. 36.119. ILLEGAL DRILLING AND OPERATION OF WELL; CITIZEN SUIT. (a) Drilling a well without a required permit or operating a well at a higher rate of production than the rate approved for the well is declared to be illegal, wasteful per se, and a nuisance.

(b) A person who has an estate in land adjacent to the land on which the well is located, or a part that lies within one-half mile of the well, may sue in a court of competent jurisdiction to restrain or enjoin the illegal drilling or operation, or both. The suit may be brought with or without the joinder of the district.

(c) The aggrieved party may also sue for damages for injuries suffered by reason of the illegal operation and for other relief to which they may be entitled. In a suit for damages, the existence or operation of a well in violation of the rules of the district is prima facie evidence of illegal drainage.

(d) The suit may be brought in the county where the illegal well is located or in the county where all or part of the affected land is located.

(e) The remedies provided by this section are cumulative of other remedies available to the individual or the district.

(f) A suit brought under this section shall be advanced for trial and determined as expeditiously as possible. The court shall not grant a postponement or continuance, including a first motion, except for reasons considered imperative by the court.

Sec. 36.120. INFORMATION. On request of the executive director or the executive administrator, the district shall make available information that it acquires concerning the groundwater resources within its jurisdiction. The district shall also provide information to the commission and Texas Water Development Board concerning its plans and activities in conserving and protecting groundwater resources. On request of a district, the executive director and the executive administrator shall provide information they acquire concerning the groundwater resources within the district's jurisdiction.

Sec. 36.121. LIMITATION ON RULEMAKING POWER OF DISTRICTS OVER WELLS IN CERTAIN COUNTIES. Except as provided by Section 36.117, a district that is created under this chapter on or after September 1, 1991, shall exempt from regulation under this chapter a well and any water produced or to be produced by a well that is located in a county that has a population of 14,000 or less if the water is to be used solely to supply a

municipality that has a population of 115,000 or less and the rights to the water produced from the well are owned by a political subdivision that is not a municipality, or by a municipality that has a population of 93,000 or less, and that purchased, owned, or held rights to the water before the date on which the district was created, regardless of the date the well is drilled or the water is produced. The district may not prohibit the political subdivision or municipality from transporting produced water inside or outside the district's boundaries.

[Sections 36.122-36.150 reserved for expansion]

SUBCHAPTER E. DISTRICT FINANCES

Sec. 36.151. EXPENDITURES. (a) A district's money may be disbursed only by check, draft, order, or other instrument.

(b) Disbursements shall be signed by at least two directors, except the board may by resolution allow certain employees of the district, or a combination of employees and directors, to sign disbursements on behalf of the board.

(c) The board may by resolution allow disbursements to be transferred by federal reserve wire system to accounts in the name of the district.

Sec. 36.152. FISCAL YEAR. (a) The district shall be operated on the basis of a fiscal year established by the board.

(b) The fiscal year may not be changed during a period in which revenue bonds of the district are outstanding or more than once in a 24-month period.

Sec. 36.153. ANNUAL AUDIT. (a) Annually, the board shall have an audit made of the financial condition of the district.

(b) The annual audit and other district records must be open to inspection during regular business hours at the principal office of the district.

Sec. 36.154. ANNUAL BUDGET. (a) The board shall prepare and approve an annual budget.

(b) The budget shall contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposal budget; and

(7) the estimated tax rate or fee revenues that will be required.

(c) The annual budget may be amended on the board's approval.

Sec. 36.155. DEPOSITORY. (a) The board shall name one or more banks to serve as depository for the district funds.

(b) District funds, other than those transmitted to a bank for payment of bonds issued by the district, shall be deposited as received with the depository bank and shall remain on deposit. This subsection does not limit the power of the board to place a portion of the district's funds on time deposit or to purchase certificates of deposit.

(c) To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds by the Public Funds Collateral Act, Chapter 2257, Government Code.

Sec. 36.156. INVESTMENTS. (a) Funds of the district may be invested and reinvested in accordance with the provisions of the Public Funds Investment Act, Chapter 2256, Government Code.

(b) The board, by resolution, may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for investments on such terms as the board considers advisable.

Sec. 36.157. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) A district may pay all costs and expenses necessarily incurred in the creation and organization of a district, including legal fees and other incidental expenses, and may reimburse any person for money advanced for these purposes.

(b) Payments may be made from money obtained from the sale of bonds first issued by the district or out of maintenance taxes or other revenues of the district.

Sec. 36.158. GRANTS. A district may make or accept grants, gratuities, advances, or loans in any form to or from any source approved by the board, including any governmental entity, and may enter into contracts, agreements, and covenants in connection with grants, gratuities, advances, or loans that the board considers appropriate.

[Sections 36.159-36.170 reserved for expansion]

SUBCHAPTER F. BONDS AND NOTES

Sec. 36.171. ISSUANCE OF BONDS AND NOTES. (a) The board may issue and sell bonds and notes in the name of the district for any lawful purpose of the district. A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to refunding bonds.

(b) A district may submit to the commission a written application for investigation of feasibility. An engineer's report describing the project, including the data, profiles, maps, plans, and specifications prepared in connection with the report, must be submitted with the application.

(c) The executive director shall examine the application and the report and shall inspect the project area. The district shall, on request, supply the executive director with additional data and information necessary for an investigation of the application, the engineer's report, and the project.

(d) The executive director shall prepare a written report on the project and include suggestions, if any, for changes or improvements in the project. The executive director shall retain a copy of the report and send a copy of the report to both the commission and the district.

(e) The commission shall consider the application, the engineer's report, the executive director's report, and any other evidence allowed by commission rule to be considered in determining the feasibility of the project.

(f) The commission shall determine whether the project to be financed by the bonds is feasible and issue an order either approving or disapproving, as

appropriate, the issuance of the bonds. The commission shall retain a copy of the order and send a copy of the order to the district.

(g) Notwithstanding any provision of this code to the contrary, the commission may approve the issuance of bonds of a district without the submission of plans and specifications of the improvements to be financed with the bonds. The commission may condition the approval on any terms or conditions considered appropriate by the commission.

Sec. 36.172. MANNER OF REPAYMENT OF BONDS AND NOTES. The board may provide for the payment of principal of and interest on the bonds and notes in any one of the following manners:

(1) from the levy and collection of ad valorem taxes on taxable property within the district;

(2) from fees;

(3) by pledging all or any part of the designated revenues from the ownership or operation of the district's works, improvements, and facilities and from the sale, transportation, and distribution of water; or

(4) from any combination of these sources.

Sec. 36.173. ADDITIONAL SECURITY FOR BONDS AND NOTES. (a) The bonds and notes may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds and notes.

(b) The trust indenture, regardless of the existence of the deed trust or mortgage lien on the properties, may contain provisions established by the board for the security of the bonds and notes and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed trust or mortgage lien shall be absolute owner of the properties and rights purchased and may maintain and operate them.

Sec. 36.174. FORM OF BONDS OR NOTES. (a) A district may issue its bonds or notes in various series or issues.

(b) Bonds or notes may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate permitted by the constitution and laws of this state.

(c) A district's bonds, notes, and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity, at the option of the district, or may contain a mandatory redemption provision.

(d) A district's bonds and notes may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

Sec. 36.175. PROVISIONS OF BONDS AND NOTES. (a) In the orders or resolutions authorizing the issuance of bonds or notes, including refunding bonds, the board may provide for the flow of funds, the establishment and

maintenance of the interest and sinking fund, the reserve fund, and other funds. The board may make additional covenants with respect to bonds or notes, pledged revenues, and the operation and maintenance of those works, improvements, and facilities, of which the revenue is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds or notes may also prohibit the further issuance of bonds, notes, or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds or notes to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds or notes being issued.

(c) The orders or resolutions of the board issuing bonds or notes may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceeding or instruments necessary and convenient in the issuance of bonds or notes.

Sec. 36.176. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds or notes, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds or notes being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general as in the case of other bonds or notes and shall be registered by the comptroller on the surrender and cancellation of the bonds or notes being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds or notes being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds or notes being refunded. If refunding bonds are issued before cancellation of the other bonds or notes, an amount sufficient to pay the principal of and interest on the bonds or notes being refunded to their maturity dates, or to their option dates if the bonds or notes have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds or notes being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds or notes being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Sec. 36.177. BONDS AND NOTES AS INVESTMENTS. District bonds and notes are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Sec. 36.178. BONDS AND NOTES AS SECURITY FOR DEPOSITS. District bonds and notes are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds or notes are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Sec. 36.179. TAX STATUS OF BONDS AND NOTES. Since a district governed by this chapter is a public entity performing an essential public function, bonds and notes issued by the district, any transaction relating to the bonds and notes, and profits made in the sale of the bonds and notes, are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

Sec. 36.180. ELECTION. (a) Bonds or notes secured in whole or in part by taxes may not be issued by the district until authorized by a majority vote of the qualified voters of the district at an election called for that purpose.

(b) The board may order an election, and the order calling the election shall state the nature and the date of the election, the hours during which the polls will be open, the location of the polling places, the amount of bonds or notes to be authorized, and the maximum maturity of the bonds or notes.

(c) At an election to authorize bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)." At any election to authorize bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

(d) The board shall canvass the returns and declare the results of the election. If a majority of the votes cast at the election favor the issuance of the bonds or notes, the bonds or notes may be issued by the board, but if a majority of the votes cast at the election do not favor issuance of the bonds or notes, the bonds or notes may not be issued.

Sec. 36.181. APPROVAL BY ATTORNEY GENERAL; REGISTRATION BY COMPTROLLER. (a) Bonds and notes issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds or notes have been authorized in accordance with law, the attorney general shall approve them, and they shall be registered by the comptroller.

(c) After the approval and registration of bonds or notes, the bonds or notes are incontestable in any court or other forum, for any reason, and are valid and binding obligations in accordance with their terms for all purposes.

[Sections 36.182-36.200 reserved for expansion]

SUBCHAPTER G. DISTRICT REVENUES

Sec. 36.201. LEVY OF TAXES. (a) The board may annually levy taxes to pay the bonds issued by the district that are payable in whole or in part by taxes.

(b) The board may annually levy taxes to pay the maintenance and operating expenses of the district at a rate not to exceed 50 cents on each \$100 of assessed valuation.

(c) The board may not levy a tax to pay the maintenance and operating expenses of the district under this section until the tax is approved by a majority of the electors voting at an election in the district held for that purpose. The district may:

(1) hold an election for approval of the tax at the same time and in conjunction with an election to authorize bonds, following the procedures applicable to a bond election; or

(2) hold a separate election for approval of the tax in accordance with Subsection (d).

(d) An order calling a separate election for approval of a tax under this section must be issued at least 15 days before the date of the election, and the election notice must be published at least twice in a newspaper of general circulation in the district. The first publication of the notice must be at least 14 days before the date of the election.

Sec. 36.202. BOARD AUTHORITY. (a) The board may levy taxes for the entire year in which the district is created.

(b) If territory is added to or annexed by the district, the board may levy taxes in the new territory for the entire year in which the territory is added or annexed.

(c) The board shall levy taxes on all property in the district subject to district taxation.

Sec. 36.203. TAX RATE. In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

Sec. 36.204. TAX APPRAISAL, ASSESSMENT AND COLLECTION.

(a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

Sec. 36.205. AUTHORITY TO SET FEES. (a) A district may set fees for administrative acts of the district, such as filing applications. Fees set by a district may not unreasonably exceed the cost to the district of performing the administrative function for which the fee is charged.

(b) A district shall set and collect fees for all services provided outside the boundaries of the district.

(c) Fees based on the amount of water to be withdrawn from a well shall not exceed:

(1) one dollar per acre foot for water used for the purpose of irrigating agricultural crops; or

(2) 17 cents per thousand gallons for water used for any other purpose.

(d) A district affected by Subsection (c)(2) that also may assess a water use fee against a specific municipality shall assess an amount not to exceed 60 percent of the total funding of the district received from water use fees assessed against that municipality and other nonexempt users in the district. This subsection shall take precedence over all prior enactments.

(e) Subsection (c) does not apply to the following districts:

- (1) the Edwards Aquifer Authority;
- (2) the Fort Bend Subsidence District; or
- (3) the Harris-Galveston Coastal Subsidence District.

[Sections 36.206-36.250 reserved for expansion]

SUBCHAPTER H. JUDICIAL REVIEW

Sec. 36.251. SUIT AGAINST DISTRICT. A person, firm, corporation, or association of persons affected by and dissatisfied with any provision or with any rule or order made by a district is entitled to file a suit against the district or its directors to challenge the validity of the law, rule, or order. The suit shall be filed in a court of competent jurisdiction in any county in which the district or any part of the district is located. The suit may only be filed after all administrative appeals to the district are final.

Sec. 36.252. SUIT TO BE EXPEDITED. A suit brought under this subchapter shall be advanced for trial and determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

Sec. 36.253. TRIAL OF SUIT. The burden of proof is on the petitioner, and the challenged law, rule, order, or act shall be deemed prima facie valid. The review on appeal is governed by the substantial evidence rule as defined by Section 2001.174, Government Code.

Sec. 36.254. SUBCHAPTER CUMULATIVE. The provisions of this subchapter do not affect other legal or equitable remedies that may be available.

[Sections 36.255-36.300 reserved for expansion]

SUBCHAPTER I. DISSOLUTION OF DISTRICT

Sec. 36.301. DISSOLUTION. (a) After notice and hearing, the commission may dissolve a district that:

- (1) has been inactive for a period of three consecutive years; and
- (2) has no outstanding bonded indebtedness.

(b) A district composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved, whereupon the commissioners court shall levy and collect taxes on all taxable property in the district in an amount sufficient to pay the principal of and interest on the indebtedness when due. The taxes shall be levied and collected in the same manner as county taxes.

(c) A district is considered active if:

- (1) the district has a board as required by Subchapter D;
- (2) the board holds regularly scheduled meetings and has on file minutes of its meetings;
- (3) the district has developed and filed with the commission a management plan for the district;
- (4) the district has copies of drillers' logs on file;

- (5) the district has on file well permits issued by the district; and
- (6) the district has on file annual district audits.

Sec. 36.302. NOTICE OF HEARING. (a) The commission shall give notice of the dissolution hearing which briefly describes the reasons for the proceeding.

(b) The notice shall be published once each week for two consecutive weeks before the day of hearing in some newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.

(c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the executive director.

Sec. 36.303. INVESTIGATION. The executive director shall investigate the facts and circumstances of the district to be dissolved and the result of the investigation shall be included in a written report.

Sec. 36.304. ORDER OF DISSOLUTION. The commission may enter an order dissolving the district at the conclusion of the hearing if it finds that the district has performed none of the functions for which it was created for a period of three consecutive years before the day of the proceeding and that the district has no outstanding bonded indebtedness.

Sec. 36.305. CERTIFIED COPY OF ORDER. The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

Sec. 36.306. APPEALS. (a) Appeals from a commission order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

(b) The trial on appeal shall be de novo and the substantial evidence rule shall not apply.

Sec. 36.307. ASSETS ESCHEAT TO STATE. Upon the dissolution of a district by the commission, all assets of the district shall escheat to the State of Texas. The assets shall be administered by the state treasurer and shall be disposed of in the manner provided by Chapter 72, Property Code.

[Sections 36.308-36.320 reserved for expansion]

SUBCHAPTER J. ADDING TERRITORY TO DISTRICT

Sec. 36.321. ADDING LAND BY PETITION OF LANDOWNER. The owner of land contiguous to a district may file with the board a notarized petition requesting that the owner's land be included in the district. The petition must describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

Sec. 36.322. ASSUMPTION OF BONDS. If the district has bonds, notes, or other obligations outstanding or bonds payable in whole or in part from taxation that have been voted but are unissued, the petitioner shall assume its share of the outstanding bonds, notes, or other obligations and any voted but unissued tax bonds of the district, and the property shall be assessed an ad valorem tax at the same rate as that set for the existing district to pay for outstanding bonds and for the maintenance and operation of the district.

Sec. 36.323. HEARING AND DETERMINATION OF PETITION. (a) The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the petitioner and to the existing district.

(b) If the district has bonds payable in whole or in part from taxation that are voted but unissued at the time of the annexation, the board may issue the voted but unissued bonds even though the boundaries of the district have been altered since the authorization of the bonds.

Sec. 36.324. RECORDING PETITION. A petition that is granted which adds land to the district shall be recorded in the office of the county clerk of the county or counties in which the land is located and the county or counties in which the existing district's principal office is located.

Sec. 36.325. ADDING CERTAIN TERRITORY BY PETITION. (a) Landowners of a defined area of territory not already in a district may file with any district a petition requesting inclusion in that district.

(b) The petition must be signed by:

(1) a majority of the landowners in the territory;

(2) at least 50 landowners if the number of landowners is more than 50; or

(3) the commissioners court of the county in which the area is located if the area is identified as a critical area or includes the entire county. The petition must describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

Sec. 36.326. HEARING ON PETITION. The board by order shall set the time and place of separate hearings on the petition to include the territory in the district. At least one hearing shall be held in the existing district and one hearing shall be held in the territory to be added.

Sec. 36.327. RESOLUTION TO ADD TERRITORY. If the board finds after the hearing on the petition that the addition of the land would benefit the district and the territory to be added, it may add the territory to the district by resolution. The board does not have to include all the territory described in the petition if it finds that a modification or change is necessary or desirable.

Sec. 36.328. ELECTION TO RATIFY ANNEXATION OF LAND. (a) Annexation of the territory is not final until ratified by a majority vote of the voters in the territory to be added. An election in the existing district accepting the addition of land is not required.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of (briefly describe additional area) in the _____ District." If the district levies a property tax for payment of its maintenance and operating expenses, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each \$100 of assessed valuation for payment of maintenance and operating expenses of the district."

(c) The amount of the tax included in the proposition shall be the maximum amount that the district is authorized to levy. If the district has outstanding or authorized bonded indebtedness, the proposition shall include language providing for the assumption by the additional area of a proportional share of the bonded indebtedness of the district.

Sec. 36.329. NOTICE AND PROCEDURE OF ELECTION. The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters are governed by the Election Code.

Sec. 36.330. LIABILITY OF ADDED TERRITORY. The added territory shall bear its pro rata share of indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

Sec. 36.331. ANNEXATION OF NONCONTIGUOUS TERRITORY. Land not contiguous to the existing boundaries of a district may not be added to or annexed to a district unless the land is located either within the same management area, critical area, or a groundwater subdivision designated by the commission or its predecessors.

[Sections 36.332-36.350 reserved for expansion]

SUBCHAPTER K. CONSOLIDATION OF DISTRICTS

Sec. 36.351. CONSOLIDATION OF DISTRICTS. (a) Two or more districts may consolidate into one district.

(b) Adjacent districts may consolidate portions of either district if one district relinquishes land within that district to the jurisdiction of the other district.

(c) A consolidation under this subchapter occurs if the board of each involved district adopts a resolution containing the terms and conditions of the consolidation.

Sec. 36.352. TERMS AND CONDITIONS OF CONSOLIDATION. (a) The terms and conditions for consolidation shall include:

- (1) adoption of a name for the district;
- (2) the number and apportionment of directors to serve on the board;
- (3) the effective date of the consolidation;
- (4) an agreement on finances for the consolidated district, including disposition of funds, property, and other assets of each district;
- (5) transfer of all permits issued in the area that is the subject of the consolidation to the consolidated district; and
- (6) an agreement on governing the districts during the transition period, including selection of officers.

(b) The terms and conditions for consolidation may include:

- (1) assumption by each district of the other district's bonds, notes, voted but unissued bonds, or other obligations;
- (2) an agreement to levy taxes to pay for bonds;
- (3) any other terms or conditions agreed upon by the board of each district.

Sec. 36.353. NOTICE AND HEARING ON CONSOLIDATION. (a) Each board shall publish notice and hold a public hearing within that district on the terms and conditions for consolidation of the districts.

(b) After the hearing, the board may, by resolution, approve the terms and conditions for consolidation and enter an order consolidating the districts.

Sec. 36.354. ELECTIONS TO APPROVE CONSOLIDATION. (a) An election to ratify the consolidation is required unless the districts to be consolidated meet the following requirements:

- (1) the districts have not authorized or issued bonds and do not levy or assess taxes; or

(2) the consolidation would not result in any additional taxing or bonding authority for any of the districts, and would not require any district to contribute to the debt payments of any other district.

(b) The board shall order an election in each district to be consolidated only after the board of each district has agreed on the terms and conditions of consolidation. The directors of each district shall order the election to be held on the same day in each district. The election shall be held and notice given in the manner provided by the Election Code.

(c) The ballots for the election shall be printed to provide for voting for or against the proposition: "The consolidation of (names of the districts to be consolidated) in the _____ District." If the district levies a property tax for payment of its bonded indebtedness, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each \$100 of assessed valuation for payment of bonds." If the district levies a property tax for payment of its maintenance and operating expenses, the proposition shall include the following language: "and the levy of a tax on property at a rate not to exceed _____ cents on each \$100 of assessed valuation for payment of maintenance and operating expenses of the district."

(d) A district may be consolidated only if a majority of the electors in each district vote in favor of the consolidation. If more than two districts are consolidating, failure of any one district to ratify the consolidation shall not prevent the consolidation of the other districts.

Sec. 36.355. GOVERNING CONSOLIDATED DISTRICTS. (a) After two or more districts are consolidated, they become one district and are governed as one district.

(b) During the transition period, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) If the consolidated district elects directors, directors for the consolidated district shall be elected in the same manner and for the same term as directors elected at a confirmation election. The directors' election shall be set for the next regular election.

Sec. 36.356. DEBTS OF ORIGINAL DISTRICTS. (a) After two or more districts are consolidated, the consolidated district shall protect the debts of the original districts and shall assure that the debts are not impaired. If the consolidated district has taxing authority, the debts may be paid by taxes levied on the land in the original districts as if they had not consolidated or from contributions from the consolidated district on terms stated in the consolidation agreement.

(b) If the consolidated district has taxing authority and assumes the bonds, notes, and other obligations of the original districts, taxes may be levied uniformly on all taxable property within the consolidated district to pay the debts.

Sec. 36.357. ASSESSMENT AND COLLECTION OF TAXES. If the consolidated district has taxing authority, the district shall assess and collect taxes on property on all property in the district for maintenance and operation of the district.

Sec. 36.358. VOTED BUT UNISSUED BONDS. If either district has voted but unissued bonds payable in whole or in part from taxation assumed by the consolidated district, the consolidated district may issue the voted but unissued bonds in the name of the consolidated district and levy a uniform tax on all taxable property in the consolidated district to pay for the bonds.

Sec. 36.359. FILING OF ORDER WITH COUNTY CLERK AND EXECUTIVE DIRECTOR. A consolidation order issued by the board shall be kept in the records of the consolidated district, recorded in the office of the county clerk in each of the counties in the consolidated district, and filed with the executive director.

SECTION 3. Section 151.003(b), Water Code, is amended to read as follows:

(b) Except as provided in this subsection, an adjoining county may be added to the district on application of the commissioners court of the adjoining county and by complying with the procedures provided in Subchapter K, Chapter 36 [~~Sections 55.730-55.744 of this code, to the extent that those provisions are applicable~~]. Any county added to the district under this subsection is subject to the jurisdiction of the board and this chapter, and two members shall be added to the board. One shall be chosen by the commissioners court of the county added to the district and one shall be chosen by the mayor of the city that has the largest population in the county that is added. The two new members shall draw lots to establish staggered terms of office.

SECTION 4. Section 151.005(a), Water Code, is amended to read as follows:

(a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapter 36 [~~Chapters 50 and 52 of this code~~], applicable to groundwater [~~underground water~~] conservation districts created under Article XVI, Section 59, of the Texas Constitution.

SECTION 5. Section 151.005(c), Water Code, is amended to read as follows:

(c) Sections 36.104, 36.114, 36.117, 36.201, 36.202, 36.203, and 36.204 [~~52.1511, 52.156, 52.167, 52.168, 52.170, and 52.173 of this code~~] and Subchapter I, Chapter 36, [~~Subchapters B, C, H, I, J, and K of Chapter 52 of this code~~] do not apply to the district.

SECTION 6. Chapter 52, Water Code, is repealed.

SECTION 7. An election conducted by a district formerly governed by Chapter 52, Water Code, on August 14, 1993, at which voters in the district approved the levy of taxes for the district's maintenance and operating expenses, is validated in all respects as of the date on which the election occurred. A district's levy and collection of taxes, as approved by that election, and a district's subsequent acts and proceedings may not be held invalid on the grounds that the district was not authorized to levy the taxes or conduct the election.

SECTION 8. This Act takes effect September 1, 1995, and applies to all actions by a district or board taken after that date. Any provision of this Act relating to suits to which a district governed by this Act is a party shall only apply to suits filed on or after the effective date of this Act.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Yost moved to adopt the conference committee report on **HB 2294**.

The motion prevailed. (Maxey recorded voting no)

HB 3073 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gallego submitted the following conference committee report on **HB 3073**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3073** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Cain
Montford
Henderson
Ratliff
Wentworth

Gallego
Solis
Alonzo

On the part of the Senate

On the part of the House

HB 3073, A bill to be entitled An Act relating to the power of the courts of appeals to issue writs of mandamus.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.221(b), Government Code, is amended to read as follows:

(b) Each court of appeals for a court of appeals district may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against a:

(1) judge of a district or county court in the court of appeals district;
or

(2) judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district.

SECTION 2. This Act applies only to a proceeding seeking a writ of mandamus filed in a court of appeals under Section 22.221, Government Code, on or after the effective date of this Act. A proceeding seeking a writ of mandamus filed under that section before the effective date of this Act is governed by the law as it existed on the date of the filing of the application

or the motion for leave to file, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1995.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Gallego moved to adopt the conference committee report on **HB 3073**.

The motion prevailed.

SB 1683 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Howard submitted the conference committee report on **SB 1683**.

SB 1683 - STATEMENT OF LEGISLATIVE INTENT

Representative Counts: Mr. Howard, may I ask you if this statement is OK for legislative intent?

Representative Howard: Yes sir.

Counts: OK. Senate Bill 1683, as originally introduced, proposed changes to the current TNRCC used oil filter management standards which have been in effect since October, 1993. The sections of the bill relating to used oil filters have now been deleted, and the bill as adopted in conference committee relates only to the management of used oil. These changes reflect the Legislature's intent to make no changes to the current used oil filter management standards set forth in Texas Administrative Code, Chapter 30, Section 330.1180-330.1189. Is that correct?

Howard: That is very correct.

Counts: I would like to request that you put that in writing and have it put in the house journal.

REMARKS ORDERED PRINTED

Representative Howard moved to print remarks by Representatives Howard and Counts on **SB 1683**.

The motion prevailed without objection.

SB 1683 - STATEMENT OF LEGISLATIVE INTENT

Representative Hirschi: Mr. Howard, in the bill that came over from the senate, I think Senator Ratliff had put some education language in there in regard to disposal of used oil filters that came at the very end of the bill, that was stricken in this final version, and I just wanted to ask the question, again for intent, that you have no problem with TNRCC promulgating educational material for the proper disposal of used filters?

Representative Howard: That is correct.

REMARKS ORDERED PRINTED

Representative Hirschi moved to print remarks by Representatives Howard and Hirschi on **SB 1683**.

The motion prevailed without objection.

SB 1683 - (consideration continued)

Representative Howard moved to adopt the conference committee report on **SB 1683**.

The motion prevailed. (Finnell recorded present, not voting)

REMARKS ORDERED PRINTED

Representative Kubiak moved to print remarks by Representatives Uher and Kubiak on **SB 345**.

The motion prevailed without objection.

HR 1218 - ADOPTED

The chair laid before the house the following privileged resolution:

By Dutton,

HR 1218

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on House Bill No. 1367 to consider and take action on the following matters:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following section to the bill:

SECTION 12. Amend Article 21.21-8, Insurance Code, by adding new Sections 4 and 5 to read as follows:

Sec. 4. AFFIRMATIVE DEFENSE. A legal entity engaged in the business of insurance as specified in Section 1 of this article is not in violation of the prohibited acts defined in or determined pursuant to Section 2 of this article if the refusal to insure; the refusal to continue to insure; the limiting of the amount, extent, or kind of coverage; or the charging of an individual a different rate for the same coverage is based upon sound actuarial principles.

Sec. 5. EXCEPTION. A legal entity engaged in the business of insurance as specified in Section 1 of this Article is not in violation of the prohibited acts defined in or determined pursuant to Section 2 of this article if the entity provides insurance coverage only to persons who are required to obtain or maintain membership or qualification for membership in a club, group, or organization so long as membership or membership qualifications are uniform requirements of the insurer as a condition of providing insurance, and are applied uniformly throughout this state, and the entity does not engage in any of the prohibited acts defined in or determined pursuant to Section 2 of the article for persons who are qualified members, except as otherwise provided in this section.

Explanation: This change is necessary to clarify the operation of Article 21.21-8, Insurance Code, as added by H.B. No. 668 of the 74th Legislature, Regular Session.

The resolution was adopted without objection.

HB 1367 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dutton submitted the following conference committee report on **HB 1367**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1367** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis
West
Patterson

Dutton
Duncan
Shields
Smithee
De La Garza

On the part of the Senate

On the part of the House

HB 1367, A bill to be entitled An Act relating to certain acts of unfair discrimination in the business of insurance and certain methods, programs, and mechanisms for providing property and casualty insurance in underserved areas; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-6 to read as follows:

Art. 21.21-6. UNFAIR DISCRIMINATION

Sec. 1. PROHIBITIONS. No person shall engage in any practice of unfair discrimination which is defined in this article or is determined pursuant to this article to be a practice of unfair discrimination in the business of insurance.

Sec. 2. APPLICATION AND SCOPE. This article shall apply to any legal entity engaged in the business of insurance in this state, including:

- (a) a capital stock company;
- (b) a mutual company;
- (c) a title insurance company;
- (d) a fraternal benefit society;
- (e) a local mutual aid association;
- (f) a statewide mutual assessment company;
- (g) a county mutual insurance company;
- (h) a Lloyd's plan company;
- (i) a reciprocal or interinsurance exchange;
- (j) a stipulated premium insurance company;
- (k) a group hospital service company;
- (l) a health maintenance organization;
- (m) a farm mutual insurance company;

- (n) a risk retention group;
- (o) a surplus lines carrier; and
- (p) agents, brokers, adjusters, and life insurance counselors.

Sec. 3. UNFAIR DISCRIMINATION DEFINED. "Unfair discrimination" means:

(a) Refusing to insure; refusing to continue to insure; limiting the amount, extent, or kind of coverage available; or charging an individual a different rate for the same coverage because of race, color, religion, or national origin;

(b) Refusing to insure; refusing to continue to insure; limiting the amount, extent, or kind of coverage available; or charging an individual a different rate for the same coverage because of the age, gender, marital status, or geographic location of the individual; however, nothing in this paragraph shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;

(c) Refusing to insure; refusing to continue to insure; limiting the amount, extent, or kind of coverage; or charging an individual a different rate for the same coverage because of disability or partial disability.

Sec. 4. EXCEPTIONS. (a) A legal entity engaged in the business of insurance as specified in Section 2 of this article is not in violation of the prohibited acts defined in or determined pursuant to Sections 3(b) and 3(c) of this article if the refusal to insure; refusal to continue to insure; the limiting of the amount, extent, or kind of coverage; or the charging of an individual a different rate for the same coverage is based upon sound underwriting or actuarial principles reasonably related to actual or anticipated loss experience.

(b) A legal entity engaged in the business of insurance as specified in Section 2 of this article is not in violation of the prohibited acts defined in or determined pursuant to Section 3 of this article if the entity provides insurance coverage only to persons who are required to obtain or maintain membership or qualification for membership in a club, group, or organization, so long as membership or membership qualifications are uniform requirements of the insurer as a condition of providing insurance, and are applied uniformly throughout this state, and the entity does not engage in any of the prohibited acts defined in or determined pursuant to Section 3 of this article for persons who are qualified members, except as otherwise provided in this section.

(c) A legal entity engaged in the business of insurance as specified in Section 2 of this article is not in violation of the prohibited acts defined in or determined pursuant to Section 3 of this article if the refusal to insure; refusal to continue to insure; the limiting of the amount, extent, or kind of coverage; or the charging of an individual a different rate for the same coverage is required or authorized by law or regulatory mandate.

(d) A legal entity in the business of insurance specified in Section 2 of this article is not in violation of the prohibited acts defined in or determined pursuant to Section 3 of this article because different premiums result for policyholders with like expense factors but different loss exposures under a mass marketing plan. The commissioner shall by rule define selected groups eligible for issuance of policies under mass marketing plan.

(e) In this article, sound actuarial principles for purposes of title insurance means based on an examination of title or closing of the transaction. This

article shall not prevent requirements to provide title insurance coverage relating to possible community, homestead, or other martial rights in land.

Sec. 5. SANCTIONS. Any legal entity engaged in the business of insurance in this state found to be in violation of or failing to comply with this article is subject to the sanctions authorized in Article 1.10 of this code, including administrative penalties authorized under Article 1.10E of this code. The commissioner may also utilize the cease and desist procedures authorized by Article 1.10A of this code.

SECTION 2. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-7 to read as follows:

Art. 21.21-7. PROHIBITION ON USE BY HEALTH INSURERS OF UNDERWRITING GUIDELINES BASED ON FLUENCY IN ENGLISH

Sec. 1. DEFINITIONS. In this article:

(1) "Health insurer" means any insurance company, group hospital service corporation, or health maintenance organization that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an evidence of coverage that provides health insurance or health care benefits. Without limiting the foregoing, the definition includes insurance companies, associations, and organizations which come within the purview of the following designated chapters of the Insurance Code: Chapter 3, pertaining to life, health, and accident insurance companies; Chapter 8, pertaining to general casualty companies; Chapter 10, pertaining to fraternal benefit societies; Chapter 11, pertaining to mutual life insurance companies; Chapter 12, pertaining to local mutual aid associations; Chapters 13 and 14, pertaining to statewide mutual assessment companies, mutual assessment companies, and mutual assessment life, health, and accident associations; Chapter 15, pertaining to mutual insurance companies writing other than life insurance; Chapter 18, pertaining to underwriters making insurance on the Lloyd's plan; Chapter 19, pertaining to reciprocal exchanges; and Chapter 22, pertaining to stipulated premium insurance companies.

(2) "Underwriting guideline" means a rule, standard, marketing decision, or practice, whether written, oral, or electronic, that is used by a health insurer or an agent of a health insurer to examine, bind, accept, reject, renew, nonrenew, cancel, charge a different rate for the same coverage, or limit coverage(s) made available to classes of consumers of insurance.

Sec. 2. APPLICATION. This article applies to any health insurance policy, agreement, contract, or evidence of coverage delivered or issued for delivery by a health insurer.

Sec. 3. PROHIBITION. A health insurer may not use an underwriting guideline that is based on the ability of an insured or an applicant for insurance coverage or health care benefits to speak English fluently or to be literate in the English language. The applicant has the burden of proof to establish a violation of this article.

SECTION 3. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.35-3 to read as follows:

Art. 5.35-3. PROPERTY PROTECTION PROGRAM FOR UNDERSERVED AREAS

Sec. 1. (a) By rule the commissioner may determine and designate areas as underserved areas for residential property insurance. In determining which areas will be designated as underserved, the commissioner shall consider whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in the underserved area and any other relevant factors as determined by the commissioner. For purposes of this article, residential property insurance means insurance coverage against loss to real or tangible personal property at a fixed location provided in a homeowners policy, residential fire and allied lines policy, or farm and ranch owners policy.

(b) The property protection program for underserved areas operated under this article may not include windstorm and hail insurance coverage for a risk eligible for that coverage under Article 21.49 of this code.

Sec. 2. All insurers authorized to write property or casualty insurance in this state and writing residential property insurance in this state, including those insurers licensed under Chapters 18 and 19 of this code, are authorized to write insurance on the forms adopted under this article.

Sec. 3. The commissioner shall adopt policy forms for residential property insurance specifically for use in the designated underserved areas. The policy forms adopted pursuant to this article shall include a basic policy covering fire and allied lines perils with endorsements providing additional coverages at the option of the insured. The adopted policy forms may be used by all insurers writing insurance in underserved areas.

Sec. 4. The rates for residential property insurance subject to this article shall be determined in accordance with the provisions of this code applicable to each insurer.

Sec. 5. In the designated underserved areas, all insurers specified in Section 2 of this article shall make available to their agents and all agents shall offer all insureds the full range of coverages promulgated under this article subject to the applicable rates and underwriting guidelines of each such insurer.

Sec. 6. The premium on all policies written pursuant to this article will not be subject to tax under Article 4.10 of this code.

Sec. 7. The premium on all policies written pursuant to this article will not be considered net direct premiums under the provisions of Section 3(g), Article 21.49, of this code.

SECTION 4. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.79 to read as follows:

Art. 21.79. GROUP INSURANCE OF PRIVATE PASSENGER AUTO AND RESIDENTIAL PROPERTY INSURANCE IN UNDERSERVED AREAS

Sec. 1. (a) By rule the commissioner may determine and designate areas as underserved areas for private passenger auto insurance or residential property insurance. In determining which areas will be designated as underserved, the commissioner shall consider whether such insurance is not reasonably available to a substantial number of insurable risks and the availability of insurance and any other relevant factors as determined by the commissioner. For purposes of this article, residential property insurance means insurance against loss to real or tangible personal property at a fixed location provided in a homeowners policy, residential fire and allied lines policy, or farm and ranch owners policy.

(b) Group insurance provided under this article may not include windstorm and hail insurance coverage for a risk eligible for that coverage under Article 21.49 of this code.

Sec. 2. All insurers authorized to write property or casualty insurance in this state and writing private passenger auto insurance or residential property insurance in this state, including insurers licensed under Chapters 18 and 19 of this code, are authorized to write such insurance on a group basis in underserved areas as designated by the commissioner.

Sec. 3. A group may be formed solely for the purpose of purchasing insurance subject to this article.

Sec. 4. All policy forms and certificates for use in underserved areas as designated by the commissioner shall be adopted by the commissioner.

Sec. 5. The rates for coverage shall be subject to the applicable statutory provisions relating to the respective insurers.

Sec. 6. The commissioner may adopt any other rules that are appropriate and necessary to implement this article.

SECTION 5. Article 21.49-12, Insurance Code, is amended to read as follows:

Art. 21.49-12. MARKET ASSISTANCE PROGRAMS

Sec. 1. CREATION OF PROGRAMS. (a) The commissioner shall [State Board of Insurance may] establish a voluntary mechanism to be called a market assistance program to assist insureds in Texas in obtaining residential property [liability] insurance coverage in underserved areas, which shall be determined and designated by the commissioner by rule using the standards specified in Section 1, Article 5.35-3, of this code [where it has been shown not to be readily available]. For purposes of this article, residential property insurance means insurance against loss to real or tangible personal property at a fixed location provided in a homeowners policy, residential fire and allied lines policy, or farm and ranch owners policy. The types of risks to be assisted under the [each] market assistance program will be established by the commissioner [board]. A market assistance program division shall be established in and operated by the Texas Department of Insurance.

(b) The market assistance program established under this article may not provide assistance with respect to windstorm and hail insurance coverage for a risk eligible for that coverage under Article 21.49 of this code.

Sec. 2. PLAN OF OPERATION. (a) The executive committee shall develop and submit the plan of operation to the commissioner for adoption by rule and shall be available to advise and consult with the commissioner with regard to the administration of the program. If the executive committee fails to submit a suitable plan of operation within 180 days following the effective date of this article, or if at any time thereafter the executive committee fails to submit suitable amendments to the plan of operation, the department shall develop and submit to the commissioner a plan of operation and thereafter any amendments thereto, and the commissioner shall, after notice and hearing, adopt by rule the plan of operation developed by the department or any amendments to the plan of operation [Each market assistance program shall be administered under a plan of operation promulgated by the board]. The [Each] plan of operation shall indicate types of coverage, policy forms and terms, application

forms, eligibility, and overall operation of the program. All insurers licensed to write property or casualty insurance and actually writing residential property insurance in this state, including Lloyds, reciprocals, or interinsurance exchanges, may [The board may require an insurer to] participate in the program unless insurer participation is made mandatory by the commissioner based on criteria provided in the plan of operation, but the commissioner [board] may not permit an insurer to condition its participation in a manner that is inequitable to the participants.

(b) The plan of operation shall include, but is not limited to, the following provisions:

(1) Applications will be accepted only from agents duly licensed by the Texas Department of Insurance. Applications from all other sources will be returned for referral to duly licensed agents of the applicant's choice for preparation and resubmission to the program.

(2) Applications for assistance shall be addressed to the Market Assistance Program at the Texas Department of Insurance. Each application must be accompanied by a copy of a current nonrenewal or cancellation notice and a current declination letter from at least one other insurer writing the coverage sought. Applicants not having previous residential property insurance coverage must provide copies of current declination letters from at least two unaffiliated insurers writing the coverage sought.

(3) Each insurer has the right to individually evaluate the risk and apply the rates in accordance with the provisions of this code applicable to each insurer.

(4) Each insurer has the option of providing a premium quote on the same coverage basis for which it normally provides insurance in this state using its own underwriting guidelines and the rates determined in accordance with the provisions of this code applicable to each insurer.

(5) An insurer shall make its premium quote, indicate its refusal to quote, or make a request for additional time within 30 days of receiving the application.

(6) If a premium quote is made, the applicant's agent shall be notified by the program so that the agent may complete the placement of the insurance, if the applicant accepts the coverage at the premium quoted.

(7) An applicant is not eligible to apply to the program again for the same coverage for the same risk if the insurer cancels or nonrenews coverage for nonpayment of premium or submission of a fraudulent claim.

(8) The plan of operation shall contain criteria under which the commissioner may make insurer participation in the program mandatory.

(c) The plan of operation may provide for subcommittees that are necessary to carry out the functions of a program.

Sec. 3. EXECUTIVE COMMITTEE. (a) The program shall be administered by an executive committee composed of 11 members appointed by the commissioner:

(1) five members who represent the interests of insurers;

(2) four public members; and

(3) two members who are licensed local recording agents. [An executive committee shall administer each market assistance program.]

(b) To be eligible to serve on the executive committee as a representative of insurers, a person must be a full-time employee of an authorized insurer. ~~[The board shall appoint the members of an executive committee.]~~

(c) The commissioner or the commissioner's designated representative shall be an ex officio member of the executive committee and must be present in every meeting of the executive committee. ~~[At least one member of the board must be designated a member of the executive committee.]~~

~~[(d) The plan of operation may provide for subcommittees that are necessary to carry out the functions of a program.]~~

~~[(e) A representative of the board must be present in every meeting of an executive committee or subcommittee.]~~

Sec. 4. AGENTS. (a) Notwithstanding any other provision of law, a market assistance program may have two categories of agents:

- (1) an originating agent; and
- (2) an issuing agent.

(b) An originating agent may complete an application for insurance on behalf of an insured for submission to the program without being appointed to represent the ultimate insurer.

(c) An issuing agent must be appointed to represent the ultimate insurer and shall perform all of the customary duties of a local recording agent including but not limited to the following:

- (1) signing, executing, and delivering policies of insurance;
- (2) maintaining a record of the business;
- (3) examining and inspecting the risk; and
- (4) receiving and collecting premiums.

(d) An originating agent shall ~~[may]~~ share commissions, as required by the market assistance program plan of operation ~~[negotiated on an individual basis]~~, with the issuing agent if the originating agent holds a license as either a local recording agent or as a salaried representative for those companies whose plan of operation does not contemplate the use of local recording agents.

(e) The originating and issuing agent may be the same person. If the originating agent and the issuing agent are not the same person, the originating agent may not be held to be the agent of the insurer unless there is an appointment as specified by Article 21.14 of this code.

(f) The program may not share in commissions.

~~[Sec. 5. FEES. The plan of operation may provide reasonable application fees to be used to cover expenses of the program. These fees must be maintained in a separate account under the control of a fiscal agent designated in the plan of operation.]~~

Sec. 5 [6]. CONFIDENTIALITY. (a) The Texas Department of Insurance ~~[State Board of Insurance]~~ shall maintain as confidential all application files and related documents received under this article.

(b) In maintaining confidentiality, the Texas Department of Insurance ~~[State Board of Insurance]~~ shall not permit the files and related documents to be made available to the public except that the Texas Department of Insurance ~~[State Board of Insurance]~~ shall allow access to those files and related documents to originating or issuing agents or to an applicant for his own file or to an insurer who agrees to insure the applicant.

Sec. 6. PERIODIC REVIEW. (a) Information concerning the number and type of applications received and placed, and such other information, as deemed appropriate by the executive committee or the commissioner, shall be collected.

(b) The executive committee shall review the demand for and performance of the program six months following the approval of the plan of operation, and at least annually thereafter, as necessary. After each such review the executive committee shall report to the commissioner as to the necessity for continued operation of the voluntary program, need for establishment of a mandatory program, or the need for establishment of a FAIR Plan pursuant to Article 21.49A of this code, or other recommendations the executive committee deems appropriate. The program shall be terminated only upon approval of the commissioner, but in no event earlier than 48 months following the commencement date of the initial plan of operation.

Sec. 7. IMMUNITY FROM LIABILITY. The program, executive committee members, and participating insurers and agents are not personally liable for any act performed in good faith within the scope of the person's authority as determined under this article or for damages occasioned by his or her official acts or omissions except for an act or omission that is corrupt or malicious.

Sec. 8. RULEMAKING AUTHORITY. The commissioner is authorized to adopt rules in addition to the plan of operation that are appropriate to accomplish the purposes of this article.

SECTION 6. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49A to read as follows:

Art. 21.49A. FAIR PLAN (FAIR ACCESS TO INSURANCE REQUIREMENTS) ACT

Sec. 1. AUTHORITY; PURPOSE. (a) If the commissioner determines, after a public hearing, that in all or any part of the state residential property insurance is not reasonably available in the voluntary market to a substantial number of insurable risks and that at least 50 percent of the applicants to the residential property market assistance program who are qualified under the plan of operation, after the commissioner has made insurer participation mandatory under the plan of operation, have not been placed with an insurer in the previous 12-month period, the commissioner may establish a FAIR (Fair Access to Insurance Requirements) Plan to deliver residential property insurance to citizens of this state in underserved areas, which shall be determined and designated by the commissioner by rule. Each insurer, as defined herein, as a condition of its authority to transact residential property insurance in this state, shall participate in the FAIR Plan Association in accordance with this Act.

(b) The FAIR Plan may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under Article 21.49 of this code.

Sec. 2. DEFINITIONS. (1) "FAIR Plan Association" or "association" means a nonprofit association established pursuant to this Act to develop and administer a program to provide residential property insurance in designated underserved areas in this state.

(2) "Insurer" means any licensed insurer writing property and casualty insurance in this state, including:

(A) a Lloyd's plan company; and

(B) a reciprocal or interinsurance exchange.

(3) "Residential property insurance" means the coverage against loss to real or tangible personal property at a fixed location provided in a homeowners policy, residential fire and allied lines policy, or farm and ranch owners policy.

(4) "Inspection bureau" means the organization or organizations designated by the FAIR Plan Association with the approval of the commissioner to make inspections to determine the condition of the properties for which residential property insurance is sought and to perform such other duties as may be authorized by the FAIR Plan Association or the commissioner. The manner and scope of the inspection and evaluation report for residential property shall be prescribed by the association pursuant to the plan of operation.

(5) "Net direct premiums" means gross direct written premiums less return premiums upon canceled contracts (irrespective of reinsurance assumed or ceded) written on residential property pursuant to this Act.

(6) "Underserved area(s)" means area(s) designated as underserved by the commissioner by rule. In determining which areas will be designated as underserved, the commissioner shall consider the factors specified in Section 1, Article 5.35-3, of this code.

Sec. 3. GOVERNING COMMITTEE; PLAN OF OPERATION. (a) The FAIR Plan shall be administered by the governing committee of the association pursuant to a plan of operation. Subject to the approval of the commissioner, the governing committee shall develop the plan of operation and propose amendments thereto. The plan of operation and any amendments thereto shall be adopted by the commissioner by rule. The governing committee may on its own initiative or at the request of the commissioner amend the plan of operation.

(b) The governing committee shall be composed of 11 members appointed by the commissioner as follows:

(1) five members who represent the interests of insurers;

(2) four public members; and

(3) two members who are licensed local recording agents.

(c) The commissioner or the commissioner's designated representative from within the Texas Department of Insurance shall serve as an ex officio member.

(d) To be eligible to serve on the governing committee as a representative of insurers, a person must be a full-time employee of an authorized insurer.

(e) The plan of operation shall provide:

(1) for establishment of a FAIR Plan Association for the issuing of residential property insurance pursuant to this Act and the distribution of the losses and the expenses in the writing of such insurance in this state;

(2) that all insurers licensed to write property insurance and writing residential property insurance shall participate in the writings, expenses, profits, and losses of the association, in the proportion that the net direct premiums, of each participating insurer, written in this state during the preceding calendar year, bear to the aggregate net direct premium written in this state by all participating insurers; such information shall be determined in accordance with the residential property statistical plan adopted by the commissioner;

(3) that a participating insurer is entitled to receive credit for similar insurance voluntarily written in a designated underserved area and its

participation in the writings in the association shall be reduced in accordance with the provisions of the plan of operation;

(4) for the immediate binding of eligible risks; for the use of premium installment payment plans, adequate marketing, and service facilities; and for the establishment of reasonable service standards;

(5) procedures for efficient, economical, fair, and nondiscriminatory administration of the FAIR Plan Association;

(6) procedures for determining the net level of participation required for each insurer in the FAIR Plan Association;

(7) for the use of deductibles and other underwriting devices and for assessment of all members in amounts sufficient to operate the association; and establish maximum limits of liability to be placed through the program; and commissions to be paid to the licensed agents submitting applications;

(8) that the association issue policies in its own name;

(9) reasonable underwriting standards for determining insurability of the risk;

(10) procedures for the assumption and ceding of reinsurance by the association; and

(11) any other procedures or operational matters deemed necessary by the governing committee or the commissioner.

Sec. 4. FAIR PLAN ASSOCIATION. Pursuant to procedures and requirements set forth in the plan of operation, the FAIR Plan Association (association) shall develop and administer a program for participation by all insurers licensed to write property insurance in this state and writing residential property insurance in this state. The association shall make residential property insurance available to applicants in underserved areas whose property is insurable in accordance with reasonable underwriting standards but who, after diligent efforts, are unable to procure such insurance through the voluntary market, as evidenced by two declinations from insurers licensed to write and actually writing residential property insurance in the state.

Sec. 5. POWERS OF THE ASSOCIATION; CENTRALIZED OPERATIONS AUTHORIZED. (a) The association is authorized, for FAIR Plan purposes only, to issue policies of insurance and endorsements thereto in its own name or a trade name duly adopted for that purpose, and to act on behalf of all participating insurers in connection with said policies and otherwise in any manner necessary to accomplish the purposes of this Act, including but not limited to issuance of policies, collection of premiums, issuance of cancellations, and payment of commissions, losses, judgments, and expenses.

(b) The participating insurers shall be liable to the association as provided in this Act and the plan of operation for the expenses and liabilities so incurred by the association, and the association shall make assessments against the participating insurers as required to meet such expenses and liabilities. In connection with any policy issued by the association:

(1) service of any notice, proof of loss, legal process, or other communication with respect to the policy shall be made upon the association; and

(2) any action by the insured constituting a claim under the policy shall be brought only against the association, and the association shall be the

proper party for all purposes in any action brought under or in connection with any such policy. The foregoing requirements shall be set forth in any policy issued by the association and the form and content of any such policy shall be subject to the approval of the commissioner.

(c) The association is authorized to assume and cede reinsurance in conformity with the plan of operation.

(d) Each insurer must participate in the writings, expenses, profits, and losses of the association in the proportion that its net direct premiums written bear to the aggregate net direct premiums written by all insurers.

Sec. 6. PROPERTY INSPECTION; FAIR PLAN PROCEDURE. (a) Any person having an insurable interest in real or tangible personal property at a fixed location in an underserved area who, after diligent effort has been unable to obtain residential property insurance, as evidenced by two current declinations from insurers licensed to write property insurance and actually writing residential property insurance in the state, is entitled upon application to the association to an inspection and evaluation of the property by representatives of the inspection bureau.

(b) Applications may be made on behalf of the applicant by a licensed local recording agent and shall be submitted on forms prescribed by the association.

(c) Promptly after the request for inspection is received, an inspection must be made and an inspection report filed with the association and made available to the applicant upon request.

(d) If the inspection bureau finds that the residential property meets the reasonable underwriting standards established in the plan of operation, the applicant shall be so informed in writing and a policy or binder shall be issued by the association. If the residential property does not meet the criteria, the applicant shall be informed, in writing, of the reasons for the failure of the residential property to meet the criteria.

(e) If, at any time, the applicant makes improvements in the residential property or its condition which the applicant believes are sufficient to make the residential property meet the criteria, a representative of the inspection bureau shall reinspect the residential property upon request. In any case, the applicant for residential property insurance shall be eligible for one reinspection any time within 60 days after the initial FAIR Plan inspection. If upon reinspection the residential property meets the reasonable underwriting standards established in the plan of operation, the applicant shall be so informed in writing and a policy or binder shall be issued by the association.

Sec. 7. APPROVAL OF RATES. The association shall file with the commissioner for approval the proposed rates and supplemental rate information to be used in connection with the issuance of policies or endorsements. Rates shall be set in an amount sufficient to carry all claims to maturity and to meet the expenses incurred in the writing and servicing of the business. Within 60 days of the filing of the proposed rates, the commissioner shall enter an order either approving or disapproving, in whole or in part, the proposed rates. The commissioner may, upon notice to the association, extend the period for entering an order under this section an additional 30 days. No such policies or endorsements shall be issued until such time as the commissioner approves

the rates to be applied to the policy or endorsement. An order disapproving a rate shall state the grounds for the disapproval and the findings in support thereof.

Sec. 8. APPEALS; JUDICIAL REVIEW. (a) Any applicant or affected insurer has the right of appeal to the association. A decision of the association may be appealed to the commissioner within 30 days after such decision.

(b) All orders or decisions of the commissioner made pursuant to this Act are subject to judicial review in accordance with Article 1.04 of this code.

Sec. 9. IMMUNITY FROM LIABILITY. There is no liability on the part of, and no cause of action against insurers, the inspection bureau, the association, the governing committee, their agents or employees, or the commissioner or the commissioner's authorized representatives, with respect to any inspections required to be undertaken by this Act or for any acts or omissions in connection therewith, or for any statements made in any report and communication concerning the insurability of the property, or in the findings required by the provisions of this Act, or at the hearings conducted in connection with such inspections.

Sec. 10. INSOLVENCY. In the event any participating insurer fails, by reason of insolvency, to pay any assessment, the association shall cause the reimbursement ratios to be immediately recalculated, excluding therefrom the amount of the insolvent insurer's assessment determined by the commissioner to be uncollectible, so that such uncollectible amount is, in effect, assumed and redistributed among the remaining participating insurers.

Sec. 11. ASSESSMENTS AND PREMIUM SURCHARGES. Should a deficit occur in the association, the association shall assess participating insurers in accordance with this section and each insurer may charge a premium surcharge on every property insurance policy issued by it insuring property in this state, the effective date of which policy is within the three-year period commencing 90 days after the date of assessment by the association. The amount of the surcharge shall be calculated on the basis of a uniform percentage of the premium on such policies equal to one-third of the ratio of the amount of an insurer's assessment to the amount of its direct earned premiums as reported in its financial statement to the department for the calendar year immediately preceding the year in which the assessment is made, such that over the period of three years the aggregate of all such surcharges by an insurer shall be equal to the amount of the assessment of such insurer. The minimum surcharges on a policy may be \$1; all surcharges may be rounded to the nearest dollar.

Sec. 12. SANCTIONS. If the association, inspection bureau, or participating insurer is found to be in violation of or in failure to comply with this Act, each entity shall be subject to the sanctions authorized in Article 1.10 of this code, including administrative penalties authorized under Article 1.10E of this code. The commissioner may also utilize any other disciplinary procedures authorized by this code, including the cease and desist procedures authorized by Article 1.10A of this code.

Sec. 13. ANNUAL REPORT. The association shall compile a calendar year annual operating report and submit such annual report to the commissioner on or before March 31 of the following calendar year. This annual report shall be a matter of public record.

Sec. 14. POWERS OF THE COMMISSIONER. (a) In addition to any powers conferred upon the commissioner by this or any other law, the commissioner is charged with the authority to supervise the association and the inspection bureau. In addition, the commissioner has the power:

(1) to examine the operation of the association and the inspection bureau through free access to all the books, records, files, papers, and documents relating to their operation and may summon, qualify, and examine as witnesses all persons having knowledge of such operations, including the governing committee, officers, or employees thereof;

(2) to do all things necessary to enable the State of Texas and the association to fully participate in any federal program of reinsurance which may be enacted for purposes similar to the purposes of this Act;

(3) to require such reports from the association concerning risks insured by the association pursuant to this Act as may be deemed necessary; and

(4) to adopt policy forms, endorsements, rates, and rating and rule manuals for use by the association.

SECTION 7. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49B to read as follows:

Art. 21.49B. PROPERTY AND CASUALTY INSURANCE INITIATIVES TASK FORCE. The commissioner may establish a task force to study the utility and feasibility of instituting various property and casualty insurance initiatives in this state. The initiatives to be studied may include, but are not limited to:

(1) possible coordination with the Texas Department of Commerce to make certain property and casualty insurance an enterprise zone program pursuant to Chapter 2303, Government Code;

(2) possible coordination with Neighborhood Housing Service (NHS) Programs to establish voluntary NHS-Insurance Industry Partnerships;

(3) possible insurance agent programs to increase minority agency access to standard insurance companies, including minority intern programs with insurance companies;

(4) possible tax incentives for insurance written in underserved areas; and

(5) a consumer education program designed to increase the ability of consumers to differentiate among different products and providers in the property and casualty market.

SECTION 8. Article 21.53B, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) The commissioner shall have all necessary authority to enforce this section. An aggrieved party may ask the commissioner to conduct any investigation, review, hearing, or other proceeding to determine compliance with this section. The commissioner shall take all reasonable steps, including the issuance of orders and the assessment of penalties, to ensure compliance with this section.

SECTION 9. Section 4(7)(c), Article 21.21, and Articles 21.21-3 and 21.21-5, Insurance Code, are repealed.

SECTION 10. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.33B to read as follows:

Art. 5.33B. VOLUNTARY INSPECTION PROGRAM

Sec. 1. RIGHT TO VOLUNTARY INSPECTION OF PROPERTY CONDITION. Any person having an insurable interest in real or tangible personal property at a fixed location who desires to purchase residential property insurance may procure an independent inspection of the condition of the property by an inspector authorized to perform inspections under this article of the property proposed to be insured.

Sec. 2. DEFINITIONS. In this article:

(a) "Residential property insurance" means insurance against loss to real or tangible personal property at a fixed location provided in a homeowners policy, residential fire and allied lines policy, or farm and ranch owners policy.

(b) "Inspection" means a physical inspection of the property for which residential property insurance is sought.

(c) "Inspection certificate" means a certificate issued by an inspector pursuant to this article indicating that the condition of the property meets or exceeds minimum standards.

(d) "Minimum standards" are those standards for property condition insurability under this article as the commissioner shall determine by rule.

(e) "Inspector" means a person authorized by the commissioner to perform inspections under this article.

Sec. 3. PLAN OF OPERATION. (a) The commissioner shall adopt a plan of operation for the Voluntary Inspection Program. The plan of operation shall include rules and standards for the inspection program, including but not limited to the following:

(1) the manner and scope of the inspections to be performed;

(2) the contents of the written evaluation report;

(3) the form of the inspection certificate to be issued;

(4) the term during which an inspection certificate shall remain valid;

(5) rules for the certification and licensing of persons who are authorized to perform inspections under this program, which group shall include, but not be limited to:

(i) persons licensed to perform real property inspections under the Real Estate Licensing Act;

(ii) designated employees or agents of a county or municipality which elects to establish a voluntary inspection program to inspect properties for residential properties within the territorial limits of the county or municipality; and

(6) the fee which may be charged to the person requesting the inspection.

(b) The commissioner may adopt rules to encourage the coordination of inspections under this article with inspections performed under article 5.33A.

Sec. 4. EFFECT OF CERTIFICATE. (a) The existence of an inspection certificate issued under this article creates a presumption that the property condition is adequate for residential property insurance to be issued.

(b) As a condition of issuing a policy if an inspection certificate is used in whole or in part to determine insurability, an insurer may require a written statement by the applicant for residential property insurance stating that there have been no material or substantial changes to the property condition since the date of the inspection certificate.

(c) An insurer who receives an inspection certificate may not use property condition as grounds for refusing to issue or renew residential property insurance unless the insurer reinspects the property and specifies the areas of deficiency in its declination letter.

Sec. 5. ENFORCEMENT. The commissioner may by rule provide for the use of any of the disciplinary procedures authorized in this code to maintain the integrity of the program or ensure compliance with this article.

Sec. 6. RULEMAKING AUTHORITY. The commissioner is authorized to adopt rules in addition to the plan of operation that are appropriate to accomplish the purposes of this article.

SECTION 11. Article 21.21-7, Insurance Code, as added by this Act, applies only to a health insurance policy, contract, agreement, or evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 1996. A policy, contract, agreement, or evidence of coverage that is delivered, issued for delivery, or renewed before January 1, 1996, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 12. Article 21.21-8, Insurance Code, as added by H.B. 668, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Sections 4 and 5 to read as follows:

Sec. 4. AFFIRMATIVE DEFENSE. A legal entity engaged in the business of insurance as specified in Section 1 of this article is not in violation of the prohibited acts defined in or determined pursuant to Section 2 of this article if the refusal to insure; the refusal to continue to insure; the limiting of the amount, extent, or kind of coverage; or the charging of an individual a different rate for the same coverage is based upon sound actuarial principles.

Sec. 5. EXCEPTION. A legal entity engaged in the business of insurance as specified in Section 1 of this article is not in violation of the prohibited acts defined in or determined pursuant to Section 2 of this article if the entity provides insurance coverage only to persons who are required to obtain or maintain membership or qualification for membership in a club, group, or organization so long as membership or membership qualifications are uniform requirements of the insurer as a condition of providing insurance, and are applied uniformly throughout this state, and the entity does not engage in any of the prohibited acts defined in or determined pursuant to Section 2 of this article for persons who are qualified members, except as otherwise provided in this section.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Dutton moved to adopt the conference committee report on **HB 1367**.

The motion prevailed.

HB 1433 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hamric submitted the following conference committee report on **HB 1433**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1433** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Brown
Montford
Whitmire
Shapiro
West

Hamric
Hightower
Telford
Ramsay
Place

On the part of the Senate

On the part of the House

HB 1433, A bill to be entitled An Act relating to the eligibility for release on mandatory supervision of certain inmates of the institutional division of the Texas Department of Criminal Justice.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 8(c), Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(c) Except as otherwise provided by this subsection and Subsection (c-1), a prisoner who is not on parole shall be released to mandatory supervision by order of a parole panel when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the state and shall be amenable to conditions of supervision ordered by the parole panel. A prisoner may not be released to mandatory supervision if the prisoner is serving or has previously been convicted ~~[a sentence]~~ for an offense and the judgment for the offense contains an affirmative finding under Subdivision (2), Subsection (a), Section 3g, Article 42.12, of this code or if the prisoner is serving a sentence for or has previously been convicted of:

- (1) a first degree felony under Section 19.02, Penal Code (Murder);
- (2) a capital felony under Section 19.03, Penal Code (Capital Murder);

(3) a first degree felony or a second degree felony under Section 20.04, Penal Code (Aggravated Kidnapping);

(4) a second degree felony under Section 22.011, Penal Code (Sexual Assault);

(5) a second degree or first degree felony under Section 22.02, Penal Code (Aggravated Assault);

(6) a first degree felony under Section 22.021, Penal Code (Aggravated Sexual Assault);

(7) a first degree felony under Section 22.04, Penal Code (Injury to a Child, ~~or an~~ Elderly Individual, or Disabled Individual);

(8) a first degree felony under Section 28.02, Penal Code (Arson);

(9) a second degree felony under Section 29.02, Penal Code (Robbery);

(10) a first degree felony under Section 29.03, Penal Code (Aggravated Robbery);

(11) a first degree felony under Section 30.02, Penal Code (Burglary); ~~if the offense is punished under Subsection (d)(2) or (d)(3) of that section]; or~~
(12) ~~(13)~~ a felony for which the punishment is increased under Section 481.134, Health and Safety Code (Drug-Free Zones).

SECTION 2. Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (c-1) to read as follows:

(c-1) A prisoner may not be released on mandatory supervision if a parole panel determines that the prisoner's accrued good conduct time is not an accurate reflection of the prisoner's potential for rehabilitation and that the prisoner's release would endanger the public. A parole panel that makes a determination under this section shall specify in writing the reasons for the determination. A determination under this subsection is not subject to administrative or judicial review, except that the parole panel making the determination shall reconsider the prisoner for release on mandatory supervision at least twice during the two years after the date of the determination.

SECTION 3. (a) The change in law made by this Act applies only to a prisoner serving a sentence for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) A prisoner serving a sentence for an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 1996.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Hamric moved to adopt the conference committee report on **HB 1433**.

The motion prevailed.

HR 1212 - ADOPTED

The chair laid before the house the following privileged resolution:
by S. Turner,

HR 1212

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on House Bill No. 1718 to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit text that is not in disagreement in Section 552.103, Government Code. The omitted text reads:

Sec. 552.103. EXCEPTION: LITIGATION OR SETTLEMENT NEGOTIATIONS INVOLVING THE STATE OR A POLITICAL SUBDIVISION. (a) Information is excepted from the requirements of Section 552.021 if the attorney general or the attorney of the political subdivision has determined that the information should be withheld from public inspection, and it is information created:

(1) in anticipation of [relating to] litigation of a civil or criminal nature [or settlement negotiations,] to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; or [and]

(2) for the purpose of settlement negotiations to which the state or a political subdivision is a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is a party [that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection].

(b) A determination by the attorney of the political subdivision that the information should be withheld from public inspection does not relieve the political subdivision of its obligation to seek an attorney general decision under Section 552.301.

(c) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

(e) Information under this section includes the work product of an attorney. Protection for the work product of an attorney does not terminate on the conclusion of the litigation for which it was created.

Explanation: This change is necessary to continue in effect the current law regarding information related to litigation.

(2) House Rule 13, Sections 9(a)(1) and (2), are suspended to permit the committee to change and omit text that is not in disagreement so that Section 552.321, Government Code, may be amended to read as follows:

Sec. 552.321. SUIT FOR WRIT OF MANDAMUS. A requestor [~~person requesting information~~] or the attorney general may file suit for a writ of

mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an attorney general's decision as provided by Subchapter G or refuses to supply public information or information that the attorney general has determined is [a] public information [record].

Explanation: This change is necessary to continue in effect the current law regarding suits to make information available through a writ of mandamus and omit unnecessary proposed procedures.

(3) House Rule 13, Section 9(a)(3), is suspended to permit the committee to add text not in disagreement to Section 552.262, Government Code. The added text reads as follows:

(e) The rules of the General Services Commission do not apply to a state governmental body that is not a state agency for purposes of Subtitle D, Title 10.

Explanation: This change is necessary to allow legislative entities to establish charges for the production of copies pursuant to open records requests.

(4) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add text on a matter that is not included in either the house or senate version of the bill by including an amendment to Section 552.008, Government Code. The added text reads as follows:

Sec. 552.008. INFORMATION FOR LEGISLATIVE PURPOSES. (a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

(1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

(2) the information be labeled as confidential;

(3) the information be kept securely; or

(4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

(1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;

(2) the procedures under which the information is obtained under other law; or

(3) the use that may be made of the information obtained under other law.

Explanation: This change is necessary to allow legislative entities to receive confidential information from other governmental bodies for legislative purposes while continuing to protect the confidentiality of the information received.

The resolution was adopted without objection.

HB 1718 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative S. Turner submitted the following conference committee report on **HB 1718**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1718** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth

Leedom

Armbrister

Cain

On the part of the Senate

S. Turner

Combs

Danburg

Hochberg

On the part of the House

HB 1718, A bill to be entitled An Act relating to the revision of the open records law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The chapter heading to Chapter 552, Government Code, is amended to read as follows:

CHAPTER 552. PUBLIC INFORMATION [~~OPEN RECORDS~~]

SECTION 2. Sections 552.002, 552.003, 552.004, 552.006, 552.007, 552.008, and 552.021, Government Code, are amended to read as follows:

Sec. 552.002. DEFINITION OF PUBLIC Information; Media Containing Public Information [~~Record~~]. (a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

(b) The media on which public information is recorded include:

- (1) paper;
- (2) film;
- (3) a magnetic, optical, or solid state device that can store an electronic signal;
- (4) tape;
- (5) Mylar;
- (6) linen;
- (7) silk; and
- (8) vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory. ["Public record" means the portion of a document, writing, letter, memorandum or other written, printed, typed, copied, or developed material that contains public information.]

Sec. 552.003. DEFINITIONS [~~DEFINITION OF GOVERNMENTAL BODY~~]. [~~(a)~~] In this chapter:

(1) "Governmental[;-"governmental] body":

(A) means:

(i) [~~(1)~~] a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(ii) [~~(2)~~] a county commissioners court in the state;

(iii) [~~(3)~~] a municipal governing body in the state;

(iv) [~~(4)~~] a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(v) [~~(5)~~] a school district board of trustees;

(vi) [~~(6)~~] a county board of school trustees;

(vii) [~~(7)~~] a county board of education;

(viii) [~~(8)~~] the governing board of a special district;

(ix) [~~(9)~~] the governing body of a nonprofit corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code; and

(x) [~~(10)~~] the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) [~~(b)~~] In this chapter, "governmental body" does not include the judiciary.

(2) "Manipulation" means the process of modifying, reordering, or decoding of information with human intervention.

(3) "Processing" means the execution of a sequence of coded instructions by a computer producing a result.

(4) "Programming" means the process of producing a sequence of coded instructions that can be executed by a computer.

(5) "Public [~~(c)~~ ~~In this section, "public~~] funds" means funds of the state or of a governmental subdivision of the state.

(6) "Requestor" means a person who submits a request to a governmental body for inspection or copies of public information.

Sec. 552.004. PRESERVATION OF Information [~~Records~~]. A governmental body or, for information [~~records~~] of an elective county office, the elected county officer, may determine a time for which information [~~records~~] that is [~~are~~] not currently in use will be preserved, subject to any applicable rule or law [~~state laws~~] governing the destruction and other disposition of state and local government records or public information.

Sec. 552.006. EFFECT OF CHAPTER ON WITHHOLDING Public Information. This chapter does not authorize the withholding of public information or limit the availability of public information [~~records~~] to the public, except as expressly provided by this chapter.

Sec. 552.007. VOLUNTARY DISCLOSURE OF CERTAIN Information [~~Records~~] WHEN DISCLOSURE NOT REQUIRED. (a) This chapter does not prohibit a governmental body or its officer for public information [~~records~~] from voluntarily making part or all of its information [~~records~~] available to the public, unless the disclosure is expressly prohibited by law or the information is [~~records are~~] confidential under law.

(b) Public information [~~Records~~] made available under Subsection (a) must be made available to any person.

Sec. 552.008. INFORMATION FOR LEGISLATIVE PURPOSES. (a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

(1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

(2) the information be labeled as confidential;

(3) the information be kept securely; or

(4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information

be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

(1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;

(2) the procedures under which the information is obtained under other law; or

(3) the use that may be made of the information obtained under other law.

~~Sec. 552.021. Availability of PUBLIC INFORMATION. [(a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:~~

~~[(1) by a governmental body; or~~

~~[(2) for a governmental body and the governmental body owns the information or has a right of access to it.~~

~~[(b)] Public information is available to the public at a minimum during the normal business hours of the governmental body.~~

SECTION 3. Section 552.022, Government Code, is amended to read as follows:

Sec. 552.022. CATEGORIES OF PUBLIC INFORMATION; EXAMPLES. Without limiting the amount or kind of information that is public information under ~~[meaning of other sections of]~~ this chapter, the following categories of information are public information:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law;

(4) the name of each official and the final record of voting on all proceedings in a governmental body;

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

(6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;

(7) a description of an agency's central and field organization, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit information or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit information or requests, or obtain decisions;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7)-(10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(13) a policy statement or interpretation that has been adopted or issued by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public; ~~[and]~~

(15) information regarded as open to the public under an agency's policies;

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege or confidential under other law;

(17) information that is also contained in a public court record; and

(18) a settlement agreement to which a governmental body is a party unless the agreement is confidential under other law.

SECTION 4. Section 552.023(a), Government Code, is amended to read as follows:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information ~~[records and copies of records]~~ held by a governmental body that relates ~~[contain information relating]~~ to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

SECTION 5. Section 552.024(a), Government Code, is amended to read as follows:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates ~~[relating]~~ to the person's home address, ~~[and]~~ home telephone number, or social security number, or that reveals whether the person has family members.

SECTION 6. Section 552.102(a), Government Code, is amended to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public

information is made available under this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section.

SECTION 7. Sections 552.107 and 552.108, Government Code, are amended to read as follows:

Sec. 552.107. EXCEPTION: CERTAIN LEGAL MATTERS. Information is excepted from the requirements of Section 552.021 if:

(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct ~~[the State Bar of Texas]~~; or

(2) a court by order has prohibited disclosure of the information.

Sec. 552.108. EXCEPTION: CERTAIN LAW ENFORCEMENT AND PROSECUTORIAL INFORMATION ~~[RECORDS]~~. (a) Information held by ~~[A record of]~~ a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021.

SECTION 8. Section 552.113, Government Code, is amended to read as follows:

Sec. 552.113. EXCEPTION: GEOLOGICAL OR GEOPHYSICAL INFORMATION. (a) Information is excepted from the requirements of Section 552.021 if it is:

(1) an electric log confidential under Subchapter M, Chapter 91, Natural Resources Code; ~~[or]~~

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency~~[-];~~ or

(3) confidential under Subsections (c) through (f).

(b) Information that is shown to or examined by an employee of the General Land Office, but not retained in the land office, is not considered to be filed with the land office.

(c) In this section:

(1) "Confidential material" includes all well logs, geological, geophysical, geochemical, and other similar data, including maps and other interpretations of the material filed in the General Land Office;

(A) in connection with any administrative application or proceeding before the land commissioner, the school land board, any board for lease, or the commissioner's or board's staff; or

(B) in compliance with the requirements of any law, rule, lease, or agreement.

(2) "Basic electric logs" has the same meaning as it has in Chapter 91, Natural Resources Code.

(3) "Administrative applications" and "administrative proceedings" include applications for pooling or unitization, review of shut-in royalty payments, review of leases or other agreements to determine their validity, review of any plan of operations, review of the obligation to drill offset wells, or an application to pay compensatory royalty.

(d) Confidential material, except basic electric logs, filed in the General Land Office on or after September 1, 1985, is public information and is available to the public under Section 552.021 on and after the later of:

(1) five years from the filing date of the confidential material; or

(2) one year from the expiration, termination, or forfeiture of the lease in connection with which the confidential material was filed.

(e) Basic electric logs filed in the General Land Office on or after September 1, 1985, are either public information or confidential material to the same extent and for the same periods provided for the same logs by Chapter 91, Natural Resources Code. A person may request that a basic electric log that has been filed in the General Land Office be made confidential by filing with the land office a copy of the written request for confidentiality made to the Railroad Commission of Texas for the same log.

(f) The following are public information:

(1) basic electric logs filed in the General Land Office before September 1, 1985; and

(2) confidential material, except basic electric logs, filed in the General Land Office before September 1, 1985, provided, that Subsection (d) governs the disclosure of that confidential material filed in connection with a lease that is a valid and subsisting lease on September 1, 1995.

(g) Confidential material may be disclosed at any time if the person filing the material, or the person's successor in interest in the lease in connection with which the confidential material was filed, consents in writing to its release. A party consenting to the disclosure of confidential material may restrict the manner of disclosure and the person or persons to whom the disclosure may be made.

(h) Notwithstanding the confidential nature of the material described in this section, the material may be used by the General Land Office in the enforcement, by administrative proceeding or litigation, of the laws governing the sale and lease of public lands and minerals, the regulations of the land office, the school land board, or of any board for lease, or the terms of any lease, pooling or unitization agreement, or any other agreement or grant.

(i) An administrative hearings officer may order that confidential material introduced in an administrative proceeding remain confidential until the proceeding is finally concluded, or for the period provided in Subsection (d), whichever is later.

(j) Confidential material examined by an administrative hearings officer during the course of an administrative proceeding for the purpose of determining its admissibility as evidence shall not be considered to have been filed in the General Land Office to the extent that the confidential material is not introduced into evidence at the proceeding.

(k) This section does not prevent a person from asserting that any confidential material is exempt from disclosure as a trade secret or commercial information under Section 552.110 or under any other basis permitted by law.

SECTION 9. Section 552.117, Government Code, is amended to read as follows:

Sec. 552.117. EXCEPTION: CERTAIN ADDRESSES, TELEPHONE NUMBERS, ~~[AND] SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION~~. Information is excepted from the requirements of Section 552.021 if it is information that relates [relating] to:

[(+) the home address, [or] home telephone number, or social security number, or that reveals whether the following person has family members [of]:

(1) [(A)] a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(2) [(B)] a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code [; or

[(2) the home address, home telephone number, or social security number of an employee of the Texas Department of Criminal Justice, or the home or employment address or telephone number, name, or social security number of a family member of the employee].

SECTION 10. Section 552.122, Government Code, is amended to conform to Section 8.30, Chapter 347, Acts of the 73rd Legislature, Regular Session, 1993, to read as follows:

Sec. 552.122. EXCEPTION: ~~[CURRICULUM OBJECTIVES AND] TEST ITEMS~~. (a) A ~~[curriculum objective or]~~ test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from the requirements of Section 552.021.

(b) A test item developed by a licensing agency or governmental body is excepted from the requirements of Section 552.021.

SECTION 11. Subchapter C, Chapter 552, Government Code, is amended to conform to Section 1, Chapter 98, Acts of the 73rd Legislature, Regular Session, 1993, by adding Section 552.124 to read as follows:

Sec. 552.124. EXCEPTION: RECORDS OF LIBRARY OR LIBRARY SYSTEM. (a) A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service is excepted from the requirements of Section 552.021 unless the record is disclosed:

(1) because the library or library system determines that disclosure is reasonably necessary for the operation of the library or library system and the record is not confidential under other state or federal law;

(2) under Section 552.023; or

(3) to a law enforcement agency or a prosecutor under a court order or subpoena obtained after a showing to a district court that:

(A) disclosure of the record is necessary to protect the public safety; or

(B) the record is evidence of an offense or constitutes evidence that a particular person committed an offense.

(b) A record of a library or library system that is excepted from required disclosure under this section is confidential.

SECTION 12. Subchapter B, Chapter 552, Government Code, is amended by adding Section 552.027 to read as follows:

Sec. 552.027. EXCEPTION: INFORMATION AVAILABLE COMMERCIALY; RESOURCE MATERIAL. (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

SECTION 13. The subchapter heading to Subchapter D, Chapter 552, Government Code, is amended to read as follows:

SUBCHAPTER D. OFFICER FOR PUBLIC INFORMATION [RECORDS]

SECTION 14. Subchapter D, Chapter 552, Government Code, is amended by amending Sections 552.201, 552.202, and 552.203 and by adding Section 552.204 to read as follows:

Sec. 552.201. IDENTITY OF OFFICER FOR PUBLIC INFORMATION [RECORDS]. (a) The chief administrative officer of a governmental body is the officer for public information [records], except as provided by Subsection (b).

(b) Each elected county officer is the officer for public information [records] and the custodian, as defined by Section 201.003, Local Government Code, of the information [records] created or received by that county officer's office.

Sec. 552.202. DEPARTMENT HEADS. Each department head is an agent of the officer for public information [records] for the purposes of complying with this chapter.

Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC INFORMATION [RECORDS]. Each officer for public information [records], subject to penalties provided in this chapter, shall:

(1) make public information [records] available for public inspection and copying;

(2) carefully protect public information [records] from deterioration, alteration, mutilation, loss, or unlawful removal; and

(3) repair, renovate, or rebind public information [records] as necessary to maintain it [them] properly.

Sec. 552.204. SCOPE OF RESPONSIBILITY OF OFFICER FOR PUBLIC INFORMATION. An officer for public information is responsible for the release of public information as required by this chapter. The officer is not responsible for:

(1) the use made of the information by the requestor; or

(2) the release of information after it is removed from a record as a result of an update, a correction, or a change of status of the person to whom the information pertains.

SECTION 15. Subchapter E, Chapter 552, Government Code, is amended by amending Sections 552.221, 552.222, 552.223, 552.224, 552.225, 552.226,

552.227, 552.228, and 552.230 and by adding Section 552.231 to read as follows:

Sec. 552.221. APPLICATION FOR PUBLIC INFORMATION; Production of Public Information. (a) An officer for public information [records] of a governmental body shall promptly produce public information for inspection, duplication, or both[, ~~in the offices of the governmental body~~] on application by any person to the officer.

(b) An officer for public information complies with Subsection (a) by:

(1) providing the public information for inspection or duplication in the offices of the governmental body; or

(2) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided by mail and agrees to pay the postage.

(c) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information [records] shall certify this fact in writing to the requestor [applicant] and set a date and hour within a reasonable time when the information [record] will be available for inspection or duplication.

(d) If an officer for public information cannot produce public information for inspection or duplication within 10 calendar days after the date the information is requested under Subsection (a), the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

Sec. 552.222. PERMISSIBLE INQUIRY BY GOVERNMENTAL BODY TO REQUESTOR [~~OF PERSON APPLYING FOR INSPECTION OF RECORDS~~]. (a) The officer for public information [records] and the officer's agent may not make an inquiry of a requestor [~~person who applies for inspection or copying of a public record~~] except to establish proper identification or except as provided by Subsection (b).

(b) If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used [and the public records requested].

Sec. 552.223. UNIFORM TREATMENT OF REQUESTS FOR INFORMATION. The officer for public information [records] or the officer's agent shall treat all requests for information uniformly without regard to the position or occupation of the requestor [~~person making the request~~], the person on whose behalf the request is made, or the status of the individual as a member of the media.

Sec. 552.224. COMFORT AND FACILITY. The officer for public information [records] or the officer's agent shall give to a requestor [~~person requesting public records~~] all reasonable comfort and facility for the full exercise of the right granted by this chapter.

Sec. 552.225. TIME FOR EXAMINATION. (a) A requestor [~~person requesting public information~~] must complete the examination of the information not later than the 10th day after the date the custodian of the information makes it available to the person.

(b) The officer for public information [~~records~~] shall extend the initial examination period by an additional 10 days if, within the initial period, the requestor [~~person requesting the information~~] files with the officer for public information [~~records~~] a written request for additional time. The officer for public information [~~records~~] shall extend an additional examination period by another 10 days if, within the additional period, the requestor [~~person requesting the information~~] files with the officer for public information [~~records~~] a written request for more additional time.

(c) The time during which a person may examine information may be interrupted by the officer for public information [~~records~~] if the information is needed for use by the governmental body. The period of interruption is not considered to be a part of the time during which the person may examine the information.

Sec. 552.226. REMOVAL OF ORIGINAL RECORD. This chapter does not authorize a requestor [~~person~~] to remove an original copy of a public record from the office of a governmental body.

Sec. 552.227. RESEARCH OF STATE LIBRARY HOLDINGS NOT REQUIRED. An officer for public information [~~records~~] or the officer's agent is not required to perform general research within the reference and research archives and holdings of state libraries.

Sec. 552.228. PROVIDING SUITABLE COPY OF PUBLIC INFORMATION [~~RECORD~~] WITHIN REASONABLE TIME. (a) It shall be a policy of a governmental body to provide a suitable copy of [a] public information [~~record~~] within a reasonable time after the date on which the copy is requested.

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

(1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;

(2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) If a governmental body is unable to comply with a request to produce a copy of information in a requested medium for any of the reasons described by this section, the governmental body shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the requestor. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

Sec. 552.230. RULES OF PROCEDURE FOR INSPECTION OF PUBLIC INFORMATION [~~RECORDS~~]. A governmental body may promulgate reasonable rules of procedure under which public information [~~records~~] may be inspected efficiently, safely, and without delay.

Sec. 552.231. RESPONDING TO REQUESTS FOR INFORMATION THAT REQUIRE PROGRAMMING OR MANIPULATION OF DATA. (a)

A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) The written statement must include:

(1) a statement that the information is not available in the requested form;

(2) a description of the form in which the information is available;

(3) a description of any contract or services that would be required to provide the information in the requested form;

(4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the General Services Commission under Section 552.262; and

(5) a statement of the anticipated time required to provide the information in the requested form.

(c) The governmental body shall provide the written statement to the requestor within 20 days after the date of the governmental body's receipt of the request. The governmental body has an additional 10 days to provide the statement if the governmental body gives written notice to the requestor, within 20 days after the date of receipt of the request, that the additional time is needed.

(d) On providing the written statement to the requestor as required by this section, the governmental body does not have any further obligation to provide the information in the requested form or in the form in which it is available until the requestor states in writing to the governmental body that the requestor:

(1) wants the governmental body to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the governmental body agree; or

(2) wants the information in the form in which it is available.

(e) The officer for public information of a governmental body shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data. A governmental body shall maintain a file containing all written statements issued under this section in a readily accessible location.

SECTION 16. Section 552.261, Government Code, is amended to read as follows:

Sec. 552.261. DETERMINING COST OF COPIES. ~~[(a) A governmental body may not charge an excessive amount for noncertified, photographic reproductions of public records comprised of pages that are legal size or smaller.~~

~~[(b)]~~ The cost of obtaining a copy of public information ~~[standard or legal size photographic reproduction]~~ shall be an amount that reasonably includes all costs related to reproducing the public information ~~[record]~~, including costs of

materials, labor, and overhead. If a ~~[-unless the]~~ request is for 50 or fewer pages of paper records, the charge for the public information may not include costs of materials, labor, or overhead, but shall be limited to the photocopying costs, unless the pages to be copied are located in:

(1) more than one building; or

(2) a remote storage facility ~~[readily available information]~~.

~~[(c) The General Services Commission shall periodically determine guidelines for the actual cost of standard size reproductions and shall periodically publish these cost figures for use by governmental bodies in determining charges under this subchapter.]~~

SECTION 17. Subchapter F, Chapter 552, Government Code, is amended by amending Sections 552.262, 552.263, 552.264, 552.266, 552.267, 552.268, and 552.269 and by adding Sections 552.270, 552.271, 552.272, and 552.273 to read as follows:

Sec. 552.262. RULES OF THE GENERAL SERVICES COMMISSION ~~[COST FOR NONSTANDARD RECORDS]~~. (a) The General Services Commission shall adopt rules for use by each governmental body in determining charges under this subchapter. The rules adopted by the General Services Commission shall be used by each governmental body in determining charges for copies of public information, except to the extent that other law provides for charges for specific kinds of public information. The charges for public information may not be excessive and may not exceed the actual cost of producing the information. A governmental body, other than an agency of state government, may determine its own charges for producing public information but shall not charge more than a 25 percent variance from the rules established by the General Services Commission unless the governmental body requests an exemption under Subsection (c).

(b) The rules of the General Services Commission shall prescribe the methods for computing the charges for copies of public information in paper, electronic, and other kinds of media. The rules shall establish costs for various components of charges for public information that shall be used by each governmental body in providing copies of public information.

(c) A governmental body may request that it be exempt from part or all of the rules adopted by the General Services Commission for determining charges for public information. The request must be made in writing to the General Services Commission and must state the reason for the exemption. If the General Services Commission determines that good cause exists for exempting a governmental body from a part or all of the rules, the commission shall give written notice of the determination to the governmental body within 90 days of the request. On receipt of the determination, the governmental body may amend its charges for public information according to the determination of the General Services Commission.

(d) The General Services Commission shall publish annually in the Texas Register a list of the governmental bodies that have authorization from the General Services Commission to adopt any modified rules for determining the cost of public information.

(e) The rules of the General Services Commission do not apply to a state governmental body that is not a state agency for purposes of Subtitle D, Title

10. ~~[The charge for access to public records that are comprised in a form other than standard or smaller sized pages or that are in computer record banks, microfilm records, or other similar record keeping systems shall be set:~~

~~[(1) making every effort to match the charge with the actual cost of providing the record;~~

~~[(2) after consultation between a governmental body's officer for public records and the General Services Commission; and~~

~~[(3) in an amount that reasonably includes all costs related to providing the record, including costs of materials, labor, and overhead.]~~

Sec. 552.263. BOND FOR PAYMENT OF COSTS OR CASH PREPAYMENT FOR PREPARATION OF PUBLIC INFORMATION [RECORDS]. An officer for public information [records] or the officer's agent may require a deposit or bond for payment of [costs or cash prepayment of] anticipated costs for the preparation of a copy of public information [record] if the charge for [preparation of] the copy is estimated by the governmental body to exceed \$100 [record would be unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid].

Sec. 552.264. COPY OF PUBLIC INFORMATION [RECORD] REQUESTED BY MEMBER OF LEGISLATURE. One copy of [a] public information [record] that is requested from a state agency by a member of the legislature in the performance of the member's duties shall be provided without charge.

Sec. 552.266. COPY OF PUBLIC INFORMATION [RECORD] PROVIDED BY MUNICIPAL COURT CLERK. The charge for a copy made by a municipal court clerk shall be the charge provided by municipal ordinance.

Sec. 552.267. WAIVER OR REDUCTION OF FEE FOR COPY OF PUBLIC INFORMATION [RECORD]. (a) A governmental body shall furnish a copy of public information [records] without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

(b) If the cost to a governmental body of processing the collection of a charge for a copy of public information will exceed the amount of the charge, the governmental body may waive the charge.

Sec. 552.268. EFFICIENT USE OF PUBLIC Resources [RECORDS]. A governmental body shall make reasonably efficient use of supplies and other resources [each page of a public record] to avoid excessive reproduction costs.

Sec. 552.269. Overcharge or [RECOVERY OF] OVERPAYMENT FOR PUBLIC INFORMATION [RECORD]. (a) A person who believes the person has been overcharged for a copy of public information may complain to the General Services Commission in writing of the alleged overcharge, setting forth the reasons why the person believes the charges are excessive. The General Services Commission shall review the complaint and make a determination in writing as to the appropriate charge for the requested information. The governmental body shall respond to the General Services Commission to any written questions asked of the governmental body by the commission regarding the charges made for the public information. The response must be made to the General Services Commission within 10 days after the date the questions

are received by the governmental body. If the General Services Commission determines that a governmental body has overcharged for requested public information, the governmental body shall promptly adjust its charges in accordance with the determination of the General Services Commission.

(b) A person who overpays for a copy of [a] public information [record] because a governmental body refuses or fails to follow the rules for charges adopted by the General Services Commission [provide the copy at the actual cost of reproducing the record as provided by Sections 552.261 and 552.262] is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the costs.

Sec. 552.270. COST OF GOVERNMENT PUBLICATION. (a) The cost provisions of this subchapter do not apply to a publication that is compiled and printed by or for a governmental body for public dissemination. If the cost of the publication is not determined by state law, a governmental body may determine the charge to be made for the publication.

(b) This section does not prohibit a governmental body from providing a publication free of charge if state law does not require that a certain charge be made.

Sec. 552.271. INSPECTION OF PAPER RECORD IF COPY NOT REQUESTED. A charge may not be imposed for making available for inspection any public information that exists in a paper record, except that if a requested page contains confidential information that must be edited from the record before the information can be made available, the governmental body may charge for the cost of making a copy of the page from which information must be edited. No charge other than the cost of the copy may be imposed.

Sec. 552.272. INSPECTION OF ELECTRONIC RECORD IF COPY NOT REQUESTED. (a) In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information, unless complying with the request will require programming or manipulation of data. If programming or manipulation of data is required, the governmental body shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available. A charge under this section must be assessed in accordance with this subchapter.

(b) If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means, the electronic form of the information may be electronically copied from that computer without charge if accessing the information does not require processing, programming, or manipulation on the government-owned or government-leased computer before the information is copied.

(c) If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means and the information requires processing, programming, or manipulation before it can be electronically copied, a governmental body may impose charges in accordance with this subchapter.

(d) If information is created or kept in an electronic form, a governmental body is encouraged to explore options to separate out confidential information and to make public information available to the public through electronic access through a computer network or by other means.

Sec. 552.273. INTERIM CHARGES FOR GEOGRAPHIC INFORMATION SYSTEMS DATA. (a) A municipality that does not collect records preservation funds may provide access to geographic information systems (GIS) data at low cost or no cost to requestors. A means by which the municipality may provide access to the information at low or no cost may include public access terminals, dial-up services, or any similar type of access.

(b) If a municipality provides access as provided by Subsection (a), the municipality may set charges for providing copies of the GIS database. The factors considered in setting the charges may include data collection costs, system operation costs, and an estimation of the value of the information on the commercial market.

(c) The General Services Commission shall conduct a study to determine reasonable charges for geographic information systems data. The study shall be completed not later than September 30, 1996, with full participation of parties, including:

- (1) the Geographic Information Systems Planning Council;
- (2) representatives of county and municipal governments; and
- (3) other interested parties.

(d) This section expires August 31, 1997.

SECTION 18. Section 552.301, Government Code, is amended to read as follows:

Sec. 552.301. REQUEST FOR ATTORNEY GENERAL DECISION. (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

(b) A governmental body that requests an attorney general decision under Subsection (a) [~~wishes to withhold information~~] must within a reasonable time but not later than the 15th calendar day after the date of receiving the written request:

(1) submit to the attorney general written comments stating the reasons why the stated exceptions apply that would allow the information to ~~[should]~~ be withheld;

(2) submit to the attorney general a copy of the written request for information;

(3) submit to the attorney general a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested; and

(4) label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

SECTION 19. Section 552.303, Government Code, is amended to read as follows:

Sec. 552.303. DELIVERY OF REQUESTED INFORMATION TO ATTORNEY GENERAL; DISCLOSURE OF REQUESTED INFORMATION; Attorney General Request for Submission of Additional Information. (a) A governmental body that requests an attorney general decision under this subchapter shall supply to the attorney general, in accordance with Section 552.301, the specific information requested. The governmental body may ~~and shall~~ not disclose the information to the public or to the requestor ~~[party requesting the information]~~ until the attorney general makes a final determination that the information is public or, if suit is filed under this chapter, until a final determination that the information is public ~~[decision]~~ has been made by the court with jurisdiction over the suit, except as otherwise provided by Section 552.322.

(b) The attorney general may determine whether a governmental body's submission of information is sufficient to render a decision.

(c) If the governmental body failed to supply to the attorney general all of the specific information that is necessary to render a decision, the attorney general shall give written notice of that fact to the governmental body and the requestor.

(d) A governmental body notified under Subsection (c) shall submit the necessary additional information to the attorney general not later than the seventh calendar day after the date the notice is received.

(e) If a governmental body does not comply with Subsection (d), the information that is the subject of a person's request to the governmental body and regarding which the governmental body fails to comply with Subsection (d) is presumed to be public information.

SECTION 20. Section 552.304, Government Code, is amended to read as follows:

Sec. 552.304. SUBMISSION OF PUBLIC COMMENTS. A person ~~[member of the public]~~ may submit written comments stating reasons why the information at issue in a request for an attorney general decision should or should not be released.

SECTION 21. Section 552.305(a), Government Code, is amended to read as follows:

(a) In a case in which information is requested under this chapter and a person's ~~[third party's]~~ privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.

SECTION 22. Section 552.306, Government Code, is amended to read as follows:

Sec. 552.306. RENDITION OF ATTORNEY GENERAL DECISION; ISSUANCE OF WRITTEN OPINION. (a) The attorney general shall promptly render a decision requested under this subchapter, consistent with the standards of due process, determining whether the requested information is ~~[a public record or is]~~ within one of the exceptions of Subchapter C. The attorney general shall render the decision not later than the 60th working day after the

date the attorney general received the request for a decision. If the attorney general is unable to issue the decision within the 60-day period, the attorney general may extend the period for issuing the decision by an additional 20 working days by informing the governmental body and the requestor, during the original 60-day period, of the reason for the delay.

(b) The attorney general shall issue a written opinion of the determination and shall provide a copy of the opinion to the requestor.

SECTION 23. Subchapter G, Chapter 552, Government Code, is amended by adding Section 552.308 to read as follows:

Sec. 552.308. TIMELINESS OF ACTION BY MAIL. When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail properly addressed with postage prepaid and:

(1) it bears a post office cancellation mark indicating a time within the period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within the period.

SECTION 24. Subchapter H, Chapter 552, Government Code, is amended by amending Section 552.321 and by adding Sections 552.324 and 552.325 to read as follows:

Sec. 552.321. SUIT FOR WRIT OF MANDAMUS. A requestor [person requesting information] or the attorney general may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an attorney general's decision as provided by Subchapter G or refuses to supply public information or information that the attorney general has determined is [a] public information [record].

Sec. 552.324. SUIT BY GOVERNMENTAL BODY. The only suit a governmental body or officer for public information may file seeking to withhold information from a requestor is a suit that is filed in accordance with Sections 552.325 and 552.353 and that challenges a decision by the attorney general issued under Subchapter G.

Sec. 552.325. PARTIES TO SUIT SEEKING TO WITHHOLD INFORMATION. (a) A governmental body, officer for public information, or other person or entity that files a suit seeking to withhold information from a requestor may not file suit against the person requesting the information. The requestor is entitled to intervene in the suit.

(b) The governmental body, officer for public information, or other person or entity that files the suit shall demonstrate to the court that the governmental body, officer for public information, or other person or entity made a timely good faith effort to inform the requestor, by certified mail or by another written method of notice that requires the return of a receipt, of:

(1) the existence of the suit, including the subject matter and cause number of the suit and the court in which the suit is filed;

(2) the requestor's right to intervene in the suit or to choose to not participate in the suit;

(3) the fact that the suit is against the attorney general; and

(4) the address and phone number of the office of the attorney general.

(c) If the attorney general enters into a proposed settlement that all or part of the information that is the subject of the suit should be withheld, the attorney general shall notify the requestor of that decision and, if the requestor has not intervened in the suit, of the requestor's right to intervene to contest the withholding. The attorney general shall notify the requestor:

(1) in the manner required by the Texas Rules of Civil Procedure, if the requestor has intervened in the suit; or

(2) by certified mail or by another written method of notice that requires the return of a receipt, if the requestor has not intervened in the suit.

(d) The court shall allow the requestor a reasonable period to intervene after the attorney general attempts to give notice under Subsection (c)(2).

SECTION 25. Sections 552.351 and 552.353, Government Code, are amended to read as follows:

Sec. 552.351. DESTRUCTION, REMOVAL, OR ALTERATION OF PUBLIC INFORMATION ~~[RECORD]~~. (a) A person commits an offense if the person wilfully destroys, mutilates, removes without permission as provided by this chapter, or alters [a] public information ~~[record]~~.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than \$25 or more than \$4,000;

(2) confinement in the county jail for not less than three days or more than three months; or

(3) both the fine and confinement.

Sec. 552.353. FAILURE OR REFUSAL OF OFFICER FOR PUBLIC Information ~~[Records]~~ TO PROVIDE ACCESS TO OR COPYING OF PUBLIC Information ~~[RECORD]~~. (a) An officer for public information ~~[records]~~, or the officer's agent, commits an offense if, with criminal negligence, the officer or the officer's agent fails or refuses to give access to, or to permit or provide copying of, public information ~~[records]~~ to a requestor ~~[person-on request]~~ as provided by this chapter.

(b) It is an affirmative defense to prosecution under Subsection (a) that the officer for public information ~~[records]~~ reasonably believed that public access to the requested information ~~[records]~~ was not required and that the officer:

(1) acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record or of the attorney general issued under Subchapter G;

(2) requested a decision from the attorney general in accordance with Subchapter G, and the decision is pending; or

(3) not later than the 10th calendar day after the date of receipt of a decision by the attorney general that the information is public, filed a petition for a declaratory judgment, a writ of mandamus, or both, against the attorney general in a Travis County district court seeking relief from compliance with the decision of the attorney general, and a petition is pending.

(c) It is an affirmative defense to prosecution under Subsection (a) that a person or entity has, not later than the 10th calendar day after the date of receipt by a governmental body of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with the decision of the attorney general, and the cause is pending.

(d) It is an affirmative defense to prosecution under Subsection (a) that the defendant is the agent of an officer for public information [~~records~~] and that the agent reasonably relied on the written instruction of the officer for public information [~~records~~] not to disclose the public information [~~records~~] requested.

(e) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than six months; or
- (3) both the fine and confinement.

(f) A violation under this section constitutes official misconduct.

SECTION 26. (a) The changes in law made by this Act affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995. A request for information that is received by a governmental body before that date is governed by the law in effect at the time the request is made, and the former law is continued in effect for this purpose.

(b) Sections 552.324 and 552.325, Government Code, as added by this Act, relating to suits to withhold information from a requestor, apply only to a suit filed on or after September 1, 1995.

(c) The change in law made by this Act to Section 552.306, Government Code, applies only to a request for an attorney general decision made under Section 552.301, Government Code, on or after January 1, 1996.

SECTION 27. The attorney general may not use additional general revenue to pay for implementing the changes in law made to Section 552.306, Government Code, by this Act or add additional employees to comply with the changes in law made to Section 552.306, Government Code, by this Act.

SECTION 28. The following laws are repealed:

- (1) Section 1, Chapter 98, Acts of the 73rd Legislature, 1993; and
- (2) Section 8.30, Chapter 347, Acts of the 73rd Legislature, 1993.

SECTION 29. This Act takes effect September 1, 1995, except the following change in law takes effect January 1, 1996: the change in law to Section 552.306, Government Code, made by this Act.

SECTION 30. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative S. Turner moved to adopt the conference committee report on **HB 1718**.

The motion prevailed.

HB 2550 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Madden submitted the following conference committee report on **HB 2550**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2550** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro
Haywood
Sibley
Harris

Madden
Harris
Berlanga

On the part of the Senate

On the part of the House

HB 2550, A bill to be entitled An Act relating to the regulation of food wholesalers and manufacturers and distributors of devices under the Texas Food, Drug, and Cosmetic Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 431.221(3), Health and Safety Code, is amended to read as follows:

(3) "Food wholesaler" means a person who distributes food for resale, either through a retail outlet owned by that person or through sales to another person. The term "food wholesaler" shall not include:

(A) a commissary which distributes food primarily intended for immediate consumption on the premises of a retail outlet under common ownership; or

(B) an establishment engaged solely in the distribution of alcoholic or nonalcoholic beverages in sealed containers.

SECTION 2. Sections 431.271 and 431.272, Health and Safety Code, are amended to read as follows:

Sec. 431.271. DEFINITIONS. In this subchapter:

(1) "Distributor" means a person who furthers the marketing of a finished domestic or imported device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user. The term includes an importer or an own-label distributor. The term does not include a person who repackages a finished device or who otherwise changes the container, wrapper, or labelling of the finished device or the finished device package.

(2) "Finished device" means a device, or any accessory to a device, that is suitable for use, without regard to whether it is packaged or labelled for commercial distribution.

(3) "Importer" means any person who initially distributes a device imported into the United States.

(4) "Manufacturer" means a person who manufactures, fabricates, assembles, or processes a finished device. The term includes a person who repackages or relabels a finished device. The term does not include a person who only distributes a finished device ~~[(2) "Wholesale distribution" means distribution to a person other than a consumer or patient and includes distribution by a manufacturer, repacker, own label distributor, jobber, importer, or wholesaler].~~

(5) ~~(3)~~ "Place of business" means each location at which a finished device is manufactured or held for [wholesale] distribution [is located].

Sec. 431.272. LICENSE REQUIRED; MINIMUM STANDARDS.

(a) Except as provided by Section 431.273, a person may not operate as a distributor or manufacturer [engage in the wholesale distribution] of devices in this state unless the person has a license from the commissioner for each place of business.

(b) A ~~[wholesale]~~ distributor or manufacturer of devices in this state must comply with the minimum requirements specified in the federal Act and in this chapter.

SECTION 3. Section 431.273(a), Health and Safety Code, is amended to read as follows:

(a) A person is exempt from licensing under this subchapter if the person engages only in the following types of ~~[wholesale]~~ device distribution:

(1) intracompany sales; ~~or~~

(2) distribution from a place of business located outside of this state;

or

(3) the sale, purchase, or trade of a distressed or reconditioned device by a salvage broker or a salvage operator licensed under Chapter 432 (Texas Food, Drug, Device, and Cosmetic Salvage Act).

SECTION 4. Section 431.275, Health and Safety Code, is amended to read as follows:

Sec. 431.275. ADVISORY COMMITTEE. (a) The board shall appoint a committee to:

(1) advise the board in the development of standards and procedures relating to the licensing of distributors and manufacturers of devices under this subchapter;

(2) make recommendations to the board relating to the content of the rules adopted to implement this subchapter; and

(3) perform any other functions requested by the board in implementing and administering this subchapter.

(b) The advisory committee is composed of:

(1) one person representing a distributor of devices;

(2) two persons representing manufacturers of devices; and

(3) two public members.

(c) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a manufacturer or distributor of devices, by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a manufacturer or distributor of devices or a health care facility, corporation, or agency;

(4) has a financial interest, other than a consumer's interest, in a manufacturer or distributor of devices or a health care facility, corporation, or agency; or

(5) would qualify for appointment under Subsection (b)(1) or (2).

(d) The advisory committee members serve staggered three-year terms.

(e) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(f) A member of the advisory committee is not entitled to compensation, but is entitled to reimbursement of the member's travel expenses as provided in the General Appropriations Act for state employees.

(g) The advisory committee may elect a chair, vice chair, and secretary from among its members and may adopt rules for the conduct of its own activities.

(h) The advisory committee will have an opportunity to review and comment on the board's rules to carry out this subchapter before the rules are proposed ~~[EFFECT OF OPERATIONS IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of devices outside this state may engage in wholesale distribution of devices in this state if the person holds a license issued by the commissioner.~~

~~[(b) The commissioner may accept reports from authorities in other jurisdictions to determine the extent of compliance with this chapter. On examination of those reports and the person's compliance history and current compliance record, the commissioner may issue a license to the person if the commissioner determines that the person is in compliance with this subchapter and the board's rules.~~

~~[(c) The commissioner shall consider each licensing application filed by a person who wishes to engage in wholesale distribution of devices in this state on an individual basis].~~

SECTION 5. The heading for Subchapter L, Chapter 431, Health and Safety Code, is amended to read as follows:

**SUBCHAPTER L. ~~[WHOLESALE]~~ DEVICE DISTRIBUTORS
AND MANUFACTURERS**

SECTION 6. Section 431.021, Health and Safety Code, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the removal or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure

to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without filing a licensing statement with the commissioner as required by Section 431.202 or having a license as required by Section 431.272, as applicable;

(y) engaging in the manufacture of food in this state without first registering with the department as required by Section 431.222; or

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition.

SECTION 7. The Texas Board of Health shall appoint the initial members of the advisory committee established under Section 431.275, Health and Safety Code, as amended by this Act, not later than January 1, 1996. The initial members of the advisory committee shall be appointed for staggered terms as follows:

- (1) one member serves a one-year term;
- (2) two members serve two-year terms; and
- (3) two members serve three-year terms.

SECTION 8. The change in law made by Sections 2-4 and 6 of this Act applies only to the licensing of manufacturers and distributors of devices on or after January 1, 1996.

SECTION 9. This Act takes effect September 1, 1995.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Madden moved to adopt the conference committee report on **HB 2550**.

The motion prevailed.

HB 943 - VOTE RECONSIDERED

Representative Kubiak moved to reconsider the vote by which the house refused to adopt the conference committee report on **HB 943**.

The motion to reconsider prevailed.

(Speaker in the chair)

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney

Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 943** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Gallegos

West

Whitmire

Cain

S. Turner

Davis

Davila

Bosse

Conley

On the part of the Senate

On the part of the House

HB 943, A bill to be entitled An Act relating to performance audits of certain metropolitan transit authorities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by adding Section 12H to read as follows:

Sec. 12H. COMPTROLLER'S PERFORMANCE AUDITS OF CERTAIN AUTHORITIES. (a) In addition to the audit required by Section 12D of this Act, an authority in which the principal city has a population of more than 1.2 million is subject to performance audits by the state comptroller of public accounts to determine whether the authority is accomplishing the purposes for which it was created. In performing an audit under this section, the comptroller may examine any budgets and operations of the authority, determine whether the authority is effectively and efficiently providing the services it was created to provide, and make appropriate recommendations to the legislature.

(b) The comptroller may initiate an audit under this section at the comptroller's discretion and shall initiate an audit at the request of the governor, the lieutenant governor, the speaker of the house of representatives, or the presiding officer of the committee of the senate or the house of representatives responsible for approving legislation governing the authority, except that an audit under this section may not be performed more often than once every two years.

(c) The comptroller shall file a copy of the report of each audit performed under this section with each person who has authority to initiate the audit.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

A record vote was requested.

The motion to adopt the conference committee report on **HB 943** prevailed by (Record 597): 87 Yeas, 58 Nays, 1 Present, not voting.

Yeas — Alexander; Alonzo; Alvarado; Bailey; Berlanga; Bosse; Brady; Coleman; Conley; Cook; Counts; Cuellar, H.; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Delisi; Dukes; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Gallego; Giddings; Glaze; Goodman; Gray; Greenberg; Gutierrez; Hawley; Hernandez; Hightower; Hilderbran; Hirschi; Hochberg; Holzheuser; Hudson; Hunter, T.; Janek; Johnson; Jones, D.; Jones, J.; Junell; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Munoz; Naishtat; Oliveira; Patterson; Pickett; Place; Price; Puente; Rangel; Raymond; Rhodes; Rodriguez; Sadler; Saunders; Seidlits; Serna; Solis; Solomons; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Willis; Wolens; Yarbrough.

Nays — Averitt; Black; Brimer; Carter; Chisum; Clemons; Combs; Corte; Crabb; Craddick; Culberson; Dear; Denny; Driver; Duncan; Elkins; Finnell; Goolsby; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Heflin; Hilbert; Hill; Horn; Howard; Hunter, B.; Jackson; Kamel; Madden; Marchant; Moffat; Nixon; Oakley; Ogden; Park; Pitts; Rabuck; Ramsay; Reyna; Romo; Rusling; Shields; Siebert; Staples; Stiles; Swinford; Talton; Uher; Walker; West; Williamson; Wohlgemuth; Woolley; Yost; Zbraneck.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Allen; Wilson.

Absent — Carona; Smithee.

HB 2890 - CONFERENCE COMMITTEE REPORT SUBMITTED

Representative R. Lewis submitted the conference committee report on **HB 2890**.

Representative Corte raised a point of order against further consideration of the conference committee report on **HB 2890** on the grounds that the conference committee report on **HB 2890** violates Rule 8, Section 10, and Rule 12, Section 2, of the House Rules.

The speaker sustained the point of order, speaking as follows:

Representative Corte raises a point of order against further consideration of the conference committee report on **HB 2890** under Rule 8, Section 10, and Rule 12, Section 2, in that the bill is a local bill for purposes of the house rules for which notice has not been published.

Rule 8, Section 10, requires that notice be published on bills for which publication of notice is required under Article 16, Section 59, of the Texas Constitution. That constitutional provision requires the publication of notice on any bill that alters the authority of a water district with respect to the issuance of bonds.

HB 2890 amends the law governing the Edwards Aquifer Authority, adding Section 1.425 to that statute. Section 1.425(b) provides, in applicable part:

(b) The Edwards Underground Water District shall obtain the approval of the board of the authority before the district: . . .

(2) incurs new debt;. . .

Section 13 of the law governing the Edwards Underground Water District, (Chapter 99, Acts of the 56th Legislature, Regular Session, 1956), authorizes the district to issue bonds and levy taxes for the repayment of the debt. It is clear to the chair that requiring the district to get approval of the authority alters the authority of the district with respect to the issuance of bonds. The power to create that debt under existing law is an independent power of the governing board; under **HB 2890**, that power is dependent on the approval of another board.

The chair finds that this bill alters the power of the governing board with respect to the issuance of bonds, and that the rules of the House and the Texas Constitution require the publication of local notice for such a bill. Such notice was not published on this bill and the bill is therefore not in compliance with the rules.

Accordingly, the point of order is well-taken and sustained.

Representative Corte raises a point of order against further consideration of the conference committee report on **HB 2890** under Rule 8, Section 10, in that the bill is a local bill for purposes of the house rules for which notice has not been published.

Local notice is required under the rules for a bill that alters the authority of a water district to issue bonds. Under this bill, the Edwards Underground Water District must receive the approval of the Edwards Aquifer Authority before incurring debt. The clearly alters the authority of the district with respect to the issuance of bonds. Notice was not published on **HB 2890**.

Accordingly, the point of order is well-taken and sustained.

SCR 177 - ADOPTED
(Dear - House Sponsor)

Representative Dear moved to suspend all necessary rules to take up and consider at this time **SCR 177**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

SCR 177

WHEREAS, S.B. No. 1365 has passed the senate and the house of representatives and is being prepared for enrollment; and

WHEREAS, A technical correction needs to be made in the placement of House Amendment Number 1; now, therefore, be it

RESOLVED by the 74th Legislature of the State of Texas, That the enrolling clerk of the senate be instructed to insert House Amendment Number 1 in Article 5.13-1, Insurance Code, in SECTION 1 of the bill rather than Section 23.06, Insurance Code, in SECTION 2 of the bill.

The resolution was adopted without objection.

HCR 245 - ADOPTED

Representative Greenberg moved to suspend all necessary rules to take up and consider at this time **HCR 245**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Greenberg,

HCR 245

WHEREAS, H.B. 1379 has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains technical and typographical errors that should be corrected; now, therefore, be it

RESOLVED, That the enrolling clerk of the house of representatives be hereby instructed to make the following corrections:

(1) In SECTION 1 of the bill, in the text of proposed Section 2(b), Article 6252-13c.1, Revised Statutes, between "Probation Commission," and "and court", strike "each local law enforcement authority," and substitute "and each local law enforcement authority".

(2) In SECTION 1 of the bill, in the text of added Section 2(d)(1), Article 6252-13c.1, Revised Statutes, between "if the person" and "to sign the statement", strike "refuse" and substitute "refuses".

(3) In SECTION 1 of the bill, in the text of added Section 2(d)(2)(B), Article 6252-13c.1, Revised Statutes, between "other disposition," and "the local law enforcement authority", insert "to".

The resolution was adopted without objection.

HCR 242 - ADOPTED

Representative B. Hunter moved to suspend all necessary rules to take up and consider at this time **HCR 242**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By B. Hunter,

HCR 242

WHEREAS, H.B. 2508 has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains a typographical error that needs correction; now, therefore, be it

RESOLVED, That the enrolling clerk of the house of representatives be hereby instructed to make the following correction:

In Section 1 of the bill, in the added Section 551.125(b)(1), Government Code, strike "meeting" and substitute "meaning".

The resolution was adopted without objection.

HCR 240 - ADOPTED

Representative Oakley moved to suspend all necessary rules to take up and consider at this time **HCR 240**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Oakley,

HCR 240

WHEREAS, House Bill No. 713 has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains technical and typographical errors that should be corrected; now, therefore, be it

RESOLVED, That the enrolling clerk of the house of representatives be hereby instructed to make the following corrections:

(1) In Section 10 of the bill, in amended Section 28(e), Article 4413(29bb), between "alarm" and "records" insert "systems".

(2) In the introductory language of Section 11 of the bill, strike "by amending Section 29 to become Section 29(a) and by adding Subsection (b)".

(3) Enroll Senate Floor Amendment No. 1 as adding new Sections 3B and 3C to Article 4413(29bb).

The resolution was adopted without objection.

HR 1221 - ADOPTED

Representative Williamson moved to suspend all necessary rules to take up and consider at this time **HR 1221**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Williamson,

HR 1221, Honoring the students of Bridgeport High School.

The resolution was adopted without objection.

HR 1220 - ADOPTED

Representative Williamson moved to suspend all necessary rules to take up and consider at this time **HR 1220**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Williamson,

HR 1220, Honoring the students of Lindsay High School.

The resolution was adopted without objection.

SCR 165 - ADOPTED
(Duncan - House Sponsor)

Representative Duncan moved to suspend all necessary rules to take up and consider at this time **SCR 165**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

SCR 165, Expressing gratitude to Mrs. Margaret Mills for her outstanding service as a Commissioner for the Texas Commission on the Arts.

The resolution was adopted without objection.

HCR 243 - ADOPTED

Representative Kubiak moved to suspend all necessary rules to take up and consider at this time **HCR 243**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Kubiak,

HCR 243, Honoring the sponsors of the Buffalo Soldier Heritage Program and authorizing the Texas Juvenile Probation Commission to assist in its establishment and continuation.

The resolution was adopted without objection.

SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolutions:

HB 114, HB 158, HB 253, HB 269, HB 391, HB 399, HB 603, HB 647, HB 692, HB 774, HB 775, HB 875, HB 895, HB 984, HB 1027, HB 1028, HB 1053, HB 1108, HB 1109, HB 1125, HB 1195, HB 1204, HB 1208, HB 1233, HB 1281, HB 1302, HB 1338, HB 1358, HB 1384, HB 1388, HB 1457, HB 1496, HB 1608, HB 1637, HB 1649, HB 1736, HB 1798, HB 1823, HB 1836, HB 1844, HB 1846, HB 1856, HB 1879, HB 1884, HB 1885, HB 1935, HB 2029, HB 2034, HB 2036, HB 2039, HB 2083, HB 2085, HB 2139, HB 2152, HB 2180, HB 2226, HB 2227, HB 2257, HB 2268, HB 2362, HB 2389, HB 2398, HB 2448, HB 2460, HB 2462, HB 2477, HB 2487, HB 2529, HB 2553, HB 2584, HB 2593, HB 2618, HB 2656, HB 2662, HB 2704, HB 2710, HB 2845, HB 2856, HB 2859, HB 2866, HB 2925, HB 2940, HB 2951, HB 2952, HB 2960, HB 3017, HB 3050, HB 3086, HB 3143, HB 3179, HB 3181, HB 3186, HB 3187, HB 3197, HB 3200, HB 3214, HB 3215, HB 3227, HB 3231, HJR 35, HCR 94, HCR 129, HCR 134, HCR 166, HCR 168, HCR 178, HCR 209, HCR 224

HR 1226 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 1226**, suspending the limitations on the conferees for **HB 3021**.

HCR 244 - ADOPTED

Representative Pitts moved to suspend all necessary rules to take up and consider at this time **HCR 244**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Pitts,

HCR 244

WHEREAS, H.B. 576 has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains technical and typographical errors that should be corrected; now, therefore, be it

RESOLVED, That the enrolling clerk of the house of representatives be hereby instructed to make the following corrections:

(1) In SECTION 1 of the bill, in Section 31.06(b), Penal Code, strike added Subdivision (2) and substitute a new Subdivision (2) to read as follows:

(2) is [~~and~~] addressed to the issuer at his address shown on:

(A) [~~(1)~~] the check or order;

(B) [~~(2)~~] the records of the bank or other drawee; or

(C) [~~(3)~~] the records of the person to whom the check or order has been issued or passed; and

(2) In SECTION 1 of the bill, in Section 31.06, in added Subsection (f)(2), strike "on presentation of presentation of the check" and substitute "on presentation of the check".

The resolution was adopted without objection.

HR 1225 - ADOPTED

Representative Thompson moved to suspend all necessary rules to take up and consider at this time **HR 1225**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Thompson, Maxey, and Danburg,

HR 1225, Congratulating Kelly Martino.

The resolution was adopted without objection.

RECESS

Representative Price moved that the house recess until 9 p.m. today.

The motion prevailed without objection.

The house accordingly, at 6:16 p.m., recessed until 9 p.m. today.

NIGHT SESSION

The house met at 9 p.m. and was called to order by the speaker.

HR 1230 - ADOPTED

Representative Stiles moved to suspend all necessary rules to take up and consider at this time **HR 1230**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Laney,

HR 1230, Commemorating the 1995 Pfarvignusen Family Reunion.

The resolution was read and was adopted without objection.

On motion of Representative Black, the names of all the members of the house were added to **HR 1230** as signers thereof.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of illness:

Davila on motion of Rodriguez.

HB 1193 - MOTION TO ADOPT CONFERENCE COMMITTEE REPORT

Representative Berlanga submitted the conference committee report on **HB 1193**.

(Wilson now present)

(Gallego in the chair)

Representative Berlanga moved to adopt the conference committee report on **HB 1193**.

Representative Chisum moved to table the motion to adopt the conference committee report on **HB 1193**.

A record vote was requested.

The motion to table prevailed by (Record 598): 95 Yeas, 45 Nays, 2 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Bailey; Black; Brady; Brimer; Carter; Chisum; Clemons; Combs; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Eiland; Elkins; Finnell; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Haggerty; Hamric; Hartnett; Hawley; Heflin; Hernandez; Hirschi; Holzheuser; Howard; Hunter, B.; Jackson; Janek; Johnson; Jones, D.; Junell; Kamel; Krusee; Kubiak; Kuempel; Lewis, G.; Madden; Maxey; Moffat; Mowery; Nixon; Oakley; Ogden; Park; Patterson; Pickett; Pitts; Place; Rabuck; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Serna; Shields; Siebert; Smithee; Solomons; Staples; Stiles; Swinford; Talton; Tillery; Turner, B.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Woolley; Zbranek.

Nays — Berlanga; Bosse; Coleman; Culberson; Danburg; Davis; Dukes; Dutton; Edwards; Farrar; Giddings; Gutierrez; Harris; Hightower; Hilbert; Hill; Hochberg; Horn; Hudson; Hunter, T.; Jones, J.; King; Lewis, R.; Longoria; Luna; McCall; McCoulskey; McDonald; Moreno; Munoz; Naishtat; Oliveira; Price; Puente; Ramsay; Seidlits; Solis; Telford; Thompson; Torres; Turner, S.; Uher; Wolens; Yarbrough; Yost.

Present, not voting — Mr. Speaker; Gallego(C).

Absent, Excused — Allen; Davila.

Absent — Alonzo; Carona; Conley; Ehrhardt; Hilderbran; Marchant.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 598. I intended to vote no.

B. Hunter

When Record No. 598 was taken, I was in the senate chamber negotiating legislation. I would have voted no.

Hilderbran

(Speaker in the chair)

SB 1013 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Oakley submitted the conference committee report on **SB 1013**.

Representative Hill raised a point of order against further consideration of the conference committee report on **SB 1013** on the grounds that the conference committee report on **SB 1013** violates Rule 13, Section 7 of the House Rules.

The point of order was withdrawn.

Representative Oakley moved to adopt the conference committee report on **SB 1013**.

The motion prevailed. (Corte, Heflin and Talton recorded voting no.)

SB 1509 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative H. Cuellar submitted the conference committee report on **SB 1509**.

Representative H. Cuellar moved to adopt the conference committee report on **SB 1509**.

Representative Wohlgemuth moved to table the motion to adopt the conference committee report on **SB 1509**.

A record vote was requested.

The motion to table was lost by (Record 599): 28 Yeas, 115 Nays, 2 Present, not voting.

Yeas — Averitt; Carter; Chisum; Clemons; Cook; Corte; Delisi; Denny; Finnell; Grusendorf; Hartnett; Horn; Janek; Krusee; Madden; Moffat; Mowery; Nixon; Rabuck; Shields; Staples; Swinford; Talton; Turner, B.; Walker; Williamson; Wohlgemuth; Woolley.

Nays — Alexander; Alonzo; Alvarado; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Coleman; Combs; Conley; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davis; De La Garza; Dear; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Howard; Hudson; Hunter, B.; Hunter, T.; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey; McCall; McCoulskey; McDonald; Moreno;

Munoz; Naishtat; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Sadler; Saunders; Seidlits; Serna; Siebert; Smithee; Solis; Solomons; Stiles; Telford; Thompson; Tillery; Torres; Turner, S.; Uher; Van de Putte; West; Willis; Wilson; Wolens; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C); Rusling.

Absent, Excused — Allen; Davila.

Absent — Carona; Jackson; Marchant.

STATEMENT OF VOTE

I was shown voting no on Record No. 599. I intended to vote yes.

R. Lewis

The motion to adopt the conference committee report on **SB 1509** prevailed. (Horn, R. Lewis, Talton, and Williamson recorded voting no)

(Allen now present)

HR 1226 - ADOPTED

The speaker laid before the house the following privileged resolution:

By Kuempel,

HR 1226

BE IT RESOLVED by the House of Representatives of the State of Texas, 74th Legislature, Regular Session, 1995, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on House Bill No. 3021 to consider and take action on the following specific matters:

(1) House Rule 13, Section 9(a)(4) is suspended to permit the committee to amend Section 11, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), by adding the following text to Subsection (v): No more than 30 percent of gross bingo game sales at each bingo occasion can be on electronic or mechanical card minding devices. This provision does not include pull tabs, instant bingo tickets, or break-open bingo games.

Explanation: This provision is necessary to limit the number of card minding devices sold at each bingo occasion and to assure that paper cards will be sold.

(2) House Rule 13, Sections 9(a)(1), (3), and (4) are suspended to permit the committee to amend Section 18, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), to read as follows:

Sec. 18. FREQUENCY AND TIMES OF GAMES. An occasion ~~[A game]~~ of bingo may not be conducted under any license issued under this Act more often than three days per calendar week, not to exceed four hours per 24-hour period. A licensed organization may conduct two occasions per 24-hour period. ~~[Only one bingo occasion per day may be conducted under each license issued under this Act.]~~ No more than two organizations may conduct a game of bingo in one place on one 24-hour period ~~[day]~~. If two organizations conduct games

of bingo in one place on one 24-hour period [day], these occasions must be announced separately, and an intermission of at least 10 [30] minutes must occur between the games. No more than two bingo occasions per day may be conducted at any location except that a third occasion per day may be conducted at any location except that a third occasion may be conducted under a temporary license held by a licensed authorized organization at that location. No more than seven licensed authorized organizations may conduct bingo at any bingo premises. ~~[A game conducted under a temporary license may not be conducted in violation of this section.]~~

Explanation: These changes are necessary to make the terms consistent in both versions and to limit the number of licensed authorized organizations that may conduct bingo at a bingo premises.

(3) House Rule 13, Section 9(a)(4) is suspended to permit the committee to add the following provision to read as follows:

Nothing in this Act shall be construed as authorizing any game using a video lottery machine or machines. In this subsection, "video lottery machine" or "machine" means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, utilizing a video display and microprocessor in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens, or that directly dispenses cash, coins, or tokens.

Explanation: This change is necessary to prohibit video lotteries.

The resolution was adopted without objection.

HB 3021 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Kuempel submitted the following conference committee report on **HB 3021**:

Austin, Texas, May 27, 1995

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3021** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Cain
Rosson
Armbrister

Kuempel
Kubiak
Moreno
Heflin

On the part of the Senate

On the part of the House

HB 3021, A bill to be entitled An Act relating to the regulation of bingo; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (2), (5), and (22) and adding Subdivisions (24) and (25) to read as follows:

(2) "Bingo" or "game" means a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols ~~[on a card]~~ conforming to numbers or symbols selected at random.

(5) "Religious society" means a church, synagogue, or other organization or association that is organized primarily for religious purposes and that has been in existence within Texas for at least eight ~~[+0]~~ years.

(22) "Bingo equipment" means equipment actually used, made, or sold for the purpose of use in bingo games and includes machines or other devices from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called, electronic or mechanical cardminding devices, pull-tab or instant bingo dispensers, ~~[the balls or items themselves,]~~ bingo cards, and any other device commonly used in the direct operation of the game. "Bingo equipment" does not include:

(A) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is actually used in a bingo game subject to regulation under this Act; or

(B) commonly available component parts of bingo equipment such as light bulbs, fuses, or bingo balls.

(24) "Ticket or pull-tab dispenser" means an electronic or mechanical device that dispenses a break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game after a person inserts money into the device. A bingo game representation or combination of bingo games must be shown on the ticket dispensed.

(25) "Automated bingo services" means a computer program or system for registering or accounting for bingo sales, prizes, inventory, and prize fees, for generating required reports to the commission, and for providing the conductor of a bingo game with other information requested for accounting or other business purposes.

SECTION 2. Section 11, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended by amending Subsections (d), (k), (o), (r), and (u) and adding Subsections (v), (w), (x), (y), and (z) to read as follows:

(d) The net proceeds of any game of bingo and of any rental of premises for bingo by a licensed authorized organization shall be exclusively devoted to charitable purposes.

(k) A game of chance other than bingo may not be conducted or allowed during an occasion when bingo is played. This subsection does not prohibit the exhibition and play of an amusement machine that is not a gambling device as defined by Section 47.01, Penal Code.

(o) A licensed distributor may not furnish by sale, lease, or any other manner bingo equipment, devices, or supplies to a person other than a licensed authorized organization, another licensed distributor, or a person authorized to conduct bingo under Section 39(b)(3) or (4) of this Act. A sale of bingo

equipment, devices, or supplies authorized by this subsection must be made on terms requiring immediate payment or requiring payment not later than the 30th day after the date of actual delivery.

(r) A licensed distributor may not receive by purchase or any other manner bingo equipment, devices, or supplies from a person other than a licensed manufacturer or another licensed distributor.

(u) Bingo may be played using a pull-tab bingo game, a break-open bingo ticket, or an instant bingo ticket subject to the rules of the commission [A licensed authorized organization may not conduct a bingo game in which any player uses or is assisted by a computerized or electronic device that is used instead of or in conjunction with the player's traditional paper or nondisposable bingo card].

(v) A person may not use a card-minding device:

(1) to generate or determine the random letters, numbers, or other symbols used in playing the bingo card played with the device's assistance;

(2) as a receptacle for the deposit of tokens or money, including coins or paper currency, in payment for playing the bingo card played with the device's assistance; or

(3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or any thing of value for the bingo card played with the device's assistance. No more than 30 percent of gross bingo game sales at each bingo occasion can be on electronic or mechanical card-minding devices. This provision does not include, pull-tabs, instant bingo tickets, or break-open bingo games.

(w) A ticket or pull-tab dispenser may not be used:

(1) to generate or determine the random letters, numbers, or other symbols used in playing a bingo game;

(2) to affect the chances of winning at a bingo game;

(3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or any thing of value for the bingo game played.

(x) The price of a break-open bingo ticket, instant bingo ticket, or a pull-tab bingo game sold by a ticket or pull-tab dispenser may not exceed \$1 for each break-open bingo ticket, instant bingo ticket, or pull-tab bingo game sold. No more than five pull-tab or instant bingo dispensers may be operated in any bingo premises.

(y) A licensed authorized organization may lease or purchase electronic or mechanical card-minding devices, pull-tab or instant bingo ticket dispensers, bingo machines, consoles, blowers, and flashboards directly from licensed distributors.

(z) The toll-free "800" number operated by the Problem Gamblers' HelpLine of the Texas Council on Problem and Compulsive Gambling must be prominently displayed on each card-minding device and ticket or pull-tab dispenser.

SECTION 3. Section 13, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (j) and adding Subsections (s), (t), and (u) to read as follows:

(b) If a license is not issued or denied before the 31st day after the date of the filing of an application for a license, the payment of the proper license

fee, the filing of a copy of a valid Section 501(c) exemption statement issued by the Internal Revenue Service, if required, and the completion of a criminal background investigation has been completed ~~[On preliminary approval of an application]~~, the commission shall ~~[may]~~ issue a temporary authorization for the activity requested that is valid, subject to automatic revocation if a denial letter is issued, for ~~[any period of]~~ not more than 60 days. The effective period may be extended by the commission on written request filed before the end of the period of temporary authorization except as limited by Subsection (h) of this section.

(j) A license may not be transferred by a licensee, except that ~~[in accordance with commission rules,]~~ a licensed commercial lessor ~~[who is an individual]~~ may transfer a ~~[the individual's]~~ license held by the licensee to a corporation formed by the licensee or from one corporation owned by the licensee to another corporation owned by the licensee [individual].

(s) It is an offense for a person not licensed under this Act to sell or attempt to induce the sale of bingo equipment, devices, supplies, or automated bingo services to a person licensed to conduct bingo games.

(t) A system service provider shall not provide these services to anyone other than a licensed authorized organization or a group of licensed authorized organizations to conduct bingo. It is an offense for a system service provider to provide these services to anyone other than a licensed authorized organization or a group of licensed authorized organizations to conduct bingo.

(u) An offense under Subsection (s) or (t) is a Class A misdemeanor.

SECTION 4. The Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) is amended by adding Section 13e to read as follows:

Sec. 13e. SYSTEM SERVICE PROVIDER'S LICENSE. (a) To sell or supply, in any manner, automated bingo services for the use of licensed authorized organizations, each system service provider must obtain a license from the commission.

(b) An applicant for a license must file with the commission a written application that includes:

(1) the name and address of the applicant;

(2) if a noncorporate entity, the name and address of each owner;

(3) if a corporation, the name and address of each officer and director and each person owning 10 percent or more of any class of stock in the corporation;

(4) information regarding whether the applicant or any person who is required to be named in the application has been convicted of a felony, criminal fraud, gambling, or gambling related offense, or a crime of moral turpitude; and

(5) information regarding whether the applicant or any person required to be named in the application is an owner, officer, director, shareholder, agent, or employee of a commercial lessor licensed under this Act.

(c) A person is not eligible for a license under this section if:

(1) the person has been convicted of a felony, criminal fraud, a gambling offense, a gambling related offense, or a crime of moral turpitude and it has been less than 10 years since the termination of the sentence, parole, or probation related to the offense; or

(2) the person is an owner, officer, or director of a holder of a commercial lessor licensed under this Act.

(d) The fee for a system service provider license is \$1,000 plus any cost incurred to conduct the criminal background checks.

(e) A system service provider shall not hold another license under this Act.

(f) A license for a system service provider shall be revoked if within the license period any disqualifications under this section occur.

(g) A system service provider is subject to the same licensing provisions for manufacturers and distributors as stated in Sections 13a(a) and 13b(b) of this Act.

(h) The commission upon receipt of a complaint may inspect the system service provider services. The system service provider shall provide sufficient information to the commission in regards to a complaint.

SECTION 5. Section 16(j), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(j) The commission by rule may ~~shall~~ establish the number and type of bingo games that may be played during an occasion.

SECTION 6. Section 17(a), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person under the age of 18 years may not play a game of bingo conducted under a license issued under this Act unless the person is accompanied by his parent or guardian, except that a licensee may prohibit all persons under the age of 18 or an age younger than 18 years of age as determined by the licensee from entering the licensed premises by posting a written notice to that effect at the place where the game is conducted.

SECTION 7. Section 18, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. FREQUENCY AND TIMES OF GAMES. An occasion ~~[A game]~~ of bingo may not be conducted under any license issued under this Act more often than three days per calendar week, not to exceed four hours per 24-hour period. A licensed organization may conduct two occasions per 24-hour period. ~~[Only one bingo occasion per day may be conducted under each license issued under this Act.]~~ No more than two organizations may conduct a game of bingo in one place on one 24-hour period ~~[day]~~. If two organizations conduct games of bingo in one place on one 24-hour period ~~[day]~~, these occasions must be announced separately, and an intermission of at least 10 ~~[30]~~ minutes must occur between the games. No more than two bingo occasions per day may be conducted at any location except that a third occasion per day may be conducted at any location except that a third occasion may be conducted under a temporary license held by a licensed authorized organization at that location. No more than seven licensed authorized organizations may conduct bingo at any bingo premises. ~~[A game conducted under a temporary license may not be conducted in violation of this section.]~~

SECTION 8. Section 19a, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is amended by amending Subsection (d) to read as follows:

(d) The following items of expense incurred or paid by an organization in connection with bingo must be paid from the organization's bingo account:

- (1) advertising;
- (2) security during a bingo occasion;

- (3) the purchase and repair of bingo supplies and equipment;
- (4) prizes, other than authorized cash prizes;
- (5) stated rental;
- (6) bookkeeping, legal, or accounting services;
- (7) fees for callers, cashiers, and ushers;
- (8) license fees; ~~and~~
- (9) janitorial services; and
- (10) payment for services provided by a system service provider,

which may be paid from gross receipts as defined in this Act.

SECTION 9. Section 19(b), Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), is repealed.

SECTION 10. Nothing in this Act shall be construed as authorizing any game using a video lottery machine or machines. In this section "video lottery machine" or "machine" means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, utilizing a video display and microprocessor in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens or that directly dispenses cash, coins, or tokens.

SECTION 11. This Act takes effect September 1, 1995.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Kuempel moved to adopt the conference committee report on **HB 3021**.

The motion prevailed. (Averitt, Corte, Finnell, Johnson, Kamel, and Patterson recorded voting no)

SB 95 - MOTION TO ADOPT CONFERENCE COMMITTEE REPORT

Representative Hilderbran submitted the conference committee report on **SB 95**.

Representative Hilderbran moved to adopt the conference committee report on **SB 95**.

Representative Chisum moved to table the motion to adopt the conference committee report on **SB 95**.

The motion to table prevailed.

HB 1305 - MOTION TO ADOPT CONFERENCE COMMITTEE REPORT

Representative Gray submitted the conference committee report on **HB 1305**.

Representative Gray moved to adopt the conference committee report on **HB 1305**.

Representative Hill raised a point of order against further consideration of the conference committee report on **HB 1305** on the grounds that the conference committee report on **HB 1305** violates Rule 8, Section 13 (f) of the House Rules.

The point of order was withdrawn.

Representatives Hill and Chisum raised a point of order against further consideration of the conference committee report on **HB 1305** on the grounds that the conference committee report on **HB 1305** violates Rule 8, Section 13 (f) of the House Rules.

The speaker sustained the point of order.

ADJOURNMENT

Representative Gray moved that the house adjourn until 1:00 p.m. today in memory of the Honorable James Hury.

The motion prevailed without objection.

The house accordingly, at 12:05 a.m., May 29, adjourned until 1:00 p.m. today.